

MT LEGISLATIVE HISTORY

Chapter 410 19 91

Bill H _____ S 1

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 12 ☒ C

Hearing Date(s) Jan 16 ☒ C

Mar 14 ☒ C

Jan 22 ☒ C

_____ C

_____ C

_____ C

_____ C

Date Out Mar 18 ☒ C

Jan 22 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 1
INTRODUCED BY MAZUREK

IN THE SENATE

DECEMBER 28, 1990	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 7, 1991	FIRST READING.
JANUARY 22, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 24, 1991	PRINTING REPORT.
JANUARY 25, 1991	SECOND READING, DO PASS. ON MOTION, PASS CONSIDERATION UNTIL THE 21ST LEGISLATIVE DAY.
JANUARY 26, 1991	ENGROSSING REPORT.
JANUARY 29, 1991	ON MOTION, PASS CONSIDERATION UNTIL THE 23RD LEGISLATIVE DAY.
FEBRUARY 1, 1991	THIRD READING, PASSED. AYES, 50; NOES, 0. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 1, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 2, 1991	FIRST READING.
MARCH 18, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 20, 1991	SECOND READING, CONCURRED IN.
MARCH 21, 1991	THIRD READING, CONCURRED IN. AYES, 80; NOES, 19. RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 25, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(S) JUDICIARY

PAGE NBR..... 12
 RUN TIME09:18
 RUN DATE.... 05/20/91

CHAIRMAN--RICHARD PINSONEAULT
 NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY-JOANN BIRD

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0001	1/01	1/16		PASS AS AMENDED		1/22
MAZUREK, JOE			REVISE UCC			
SB0006	12/28	1/16		DO PASS		1/18
MAZUREK, JOE			REVISE UNIFORM STATUTORY RULE AGAINST PERPETUITIES			
SB0007	12/28	1/22		PASS AS AMENDED		2/23
MAZUREK, JOE			REPLACE UNIFORM FRAUDULENT CONVEYANCES ACT WITH UNIFORM FRAUD. TRANSFER ACT			
SB0024	12/28	1/08		PASS AS AMENDED		1/14
WILLIAMS, BOB			REQUIRE ADULT CHILD TO PAY BURIAL COSTS FOR INDIGENT PARENTS			
SB0031	12/31	1/16		PASS AS AMENDED		2/23
TOWE, TOM			REGULATE DRUG TESTING			
SB0033	1/02	1/11		DO PASS		1/11
GAGE, DEL			CODE COMMISSIONER BILL			
SB0034	1/02			TABLED ON 02/20		
THAYER, GENE			ALLOW DEFENSE OF BANK NEGLIGENCE IN CASHING CHECK OF FICTITIOUS PAYEE			
SB0037	1/03	1/18		PASS AS AMENDED		1/18
HALLIGAN, MIKE			REQUIRE COUNTIES TO PROVIDE YOUTH DETENTION SERVICES INCL. REG. FACILITIES			
SB0038	1/03	1/17		PASS AS AMENDED		1/18
HALLIGAN, MIKE			REVISE THE 24-HOUR STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL			
SB0039	1/03	1/15		DO PASS		1/1
HALLIGAN, MIKE			ELIMINATE INCARCERATION IN JAIL FOR MINOR TRAFFIC OFFENSES			
SB0049	1/03			DO PASS		1/2

REVISION OF CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROP.

PLEASE SAVE THIS COPY OF SB 1. UNLESS
MAJOR CHANGES OCCUR, DUE TO LENGTH, THIS
BILL WILL NOT BE REPRINTED.

1 SENATE BILL NO. 1
2 INTRODUCED BY MAZUREK
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 UNIFORM COMMERCIAL CODE; REVISING THE UNIFORM COMMERCIAL
6 CODE PROVISIONS GOVERNING NEGOTIABLE INSTRUMENTS TO REFLECT
7 TECHNOLOGICAL CHANGES AND TO CONFORM TO COURT DECISIONS;
8 LIMITING THE APPLICATION OF THE PROVISIONS GOVERNING
9 NEGOTIABLE INSTRUMENTS TO CHECKS, BEARER INSTRUMENTS, AND
10 ORDER INSTRUMENTS; ELIMINATING THE SUM CERTAIN REQUIREMENT
11 FOR NEGOTIABLE INSTRUMENTS; PROVIDING CONTRIBUTION RULES FOR
12 MULTIPLE PARTIES TO A DRAFT OR NOTE; PROVIDING STATUTES OF
13 LIMITATION FOR AN ACTION BASED ON A NEGOTIABLE INSTRUMENT;
14 REVISING THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE
15 GOVERNING BANK DEPOSITS AND COLLECTIONS TO CONFORM TO THE
16 REVISIONS GOVERNING NEGOTIABLE INSTRUMENTS; ADOPTING THE
17 PROVISIONS GOVERNING FUNDS TRANSFERS; ADOPTING THE UNIFORM
18 COMMERCIAL CODE PROVISIONS ON LEASES; PROVIDING GENERAL
19 RULES PERTAINING TO THE CONSTRUCTION OF LEASING CONTRACTS;
20 DEFINING THE RIGHTS AND REMEDIES OF LESSORS AND LESSEES;
21 PROVIDING RULES FOR PERFORMANCE OF LEASING CONTRACTS; MAKING
22 CERTAIN LEASES SECURED TRANSACTIONS; REVISING THE LAWS
23 GOVERNING BULK SALES; AMENDING SECTIONS 27-1-717, 30-1-105,
24 30-1-201, 30-1-207, 30-2-103, 30-2-403, 30-2-511, 30-3-101,
25 30-3-102, 30-3-104, 30-3-105, 30-3-107, 30-3-108, 30-3-109,

1 30-3-111, 30-3-114, 30-3-115, 30-3-119, 30-3-122, 30-3-202,
2 30-3-203, 30-3-204, 30-3-205, 30-3-208, 30-3-301, 30-3-302,
3 30-3-303, 30-3-304, 30-3-305, 30-3-306, 30-3-307, 30-3-401,
4 30-3-403, 30-3-404, 30-3-405, 30-3-406, 30-3-407, 30-3-409,
5 30-3-410, 30-3-412, 30-3-413, 30-3-414, 30-3-415, 30-3-417,
6 30-3-419, 30-3-504, 30-3-508, 30-3-510, 30-3-601, 30-3-603
7 30-3-604, 30-3-605, 30-4-102, 30-4-103, 30-4-104, 30-4-105
8 30-4-106, 30-4-108, 30-4-201, 30-4-202, 30-4-203, 30-4-204
9 30-4-205, 30-4-206, 30-4-207, 30-4-208, 30-4-209, 30-4-210
10 30-4-211, 30-4-212, 30-4-213, 30-4-214, 30-4-301, 30-4-302
11 30-4-303, 30-4-401, 30-4-402, 30-4-403, 30-4-406, 30-4-407
12 30-4-503, 30-6-101, 30-6-102, 30-6-103, 30-6-104, 30-6-105
13 30-6-106, 30-6-107, 30-6-108, 30-6-111, AND 30-9-113, MCA
14 AND REPEALING SECTIONS 30-3-103, 30-3-106, 30-3-110
15 30-3-112, 30-3-113, 30-3-116, 30-3-117, 30-3-118, 30-3-120
16 30-3-121, 30-3-123, 30-3-201, 30-3-206, 30-3-207, 30-3-402
17 30-3-408, 30-3-411, 30-3-416, 30-3-418, 30-3-501, 30-3-502
18 30-3-503, 30-3-505, 30-3-506, 30-3-507, 30-3-509, 30-3-511
19 30-3-602, 30-3-606, 30-3-701, 30-3-801, 30-3-802, 30-3-803
20 30-3-804, 30-3-805, 30-4-109, 30-6-109, 30-6-110, 30-9-113
21 70-1-601, 70-1-602, 70-1-603, 70-1-604, 70-1-605, 70-1-606
22 70-1-607, 70-1-608, 70-1-609, 70-1-610, 70-1-611, 70-8-101
23 70-8-102, 70-8-103, AND 70-8-104, MCA."
24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-1-105, MCA, is amended to read:

"30-1-105. Territorial application of the code -- parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.

Applicability of [sections 7 through 86] on Leases.
[Sections 11 and 12].

Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

Governing law in the Chapter on Funds Transfers.
[Section 226].

~~Bulk-transfers-subject-to-the-Chapter-on-Bulk-Transfers.~~
~~30-6-102.~~

Applicability of the Chapter on Investment Securities.

30-8-106.

Perfection provisions of the Chapter on Secured Transactions. 30-9-103."

Section 2. Section 30-1-201, MCA, is amended to read:

"30-1-201. General definitions. Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security

1 payable to bearer or endorsed in blank.

2 (6) "Bill of lading" means a document evidencing the
3 receipt of goods for shipment issued by a person engaged in
4 the business of transporting or forwarding goods, and
5 includes an airbill. "Airbill" means a document serving for
6 air transportation as a bill of lading does for marine or
7 rail transportation, and includes an air consignment note or
8 air waybill.

9 (7) "Branch" includes a separately incorporated foreign
10 branch of a bank.

11 (8) "Burden of establishing" a fact means the burden of
12 persuading the triers of fact that the existence of the fact
13 is more probable than its nonexistence.

14 (9) "Buyer in ordinary course of business" means a
15 person who, in good faith and without knowledge that the
16 sale to him is in violation of the ownership rights or
17 security interest of a third party in the goods, buys in
18 ordinary course from a person in the business of selling
19 goods of that kind, but does not include a pawnbroker. All
20 persons who sell minerals or the like (including oil and
21 gas) at wellhead or minehead shall be considered to be
22 persons in the business of selling goods of that kind.
23 "Buying" may be for cash or by exchange of other property or
24 on secured or unsecured credit and includes receiving goods
25 or documents of title under a preexisting contract for sale

1 but does not include a transfer in bulk or as security for
2 or in total or partial satisfaction of a money debt.

3 (10) "Conspicuous": A term or clause is conspicuous when
4 it is so written that a reasonable person against whom it is
5 to operate ought to have noticed it. A printed heading in
6 capitals (as: Non-Negotiable Bill of Lading) is conspicuous.
7 Language in the body of a form is "conspicuous" if it is in
8 larger or other contrasting type or color. But in a telegram
9 any stated term is "conspicuous". Whether a term or clause
10 is "conspicuous" or not is for decision by the court.

11 (11) "Contract" means the total legal obligation which
12 results from the parties' agreement as affected by this code
13 and any other applicable rules of law.

14 (12) "Creditor" includes a general creditor, a secured
15 creditor, a lien creditor and any representative of
16 creditors, including an assignee for the benefit of
17 creditors, a trustee in bankruptcy, a receiver in equity and
18 an executor or administrator of an insolvent debtor's or
19 assignor's estate.

20 (13) "Defendant" includes a person in the position of
21 defendant in a cross-action or counterclaim.

22 (14) "Delivery" with respect to instruments, documents
23 of title, chattel paper, or certificated securities means
24 voluntary transfer of possession.

25 (15) "Document of title" includes bill of lading, dock

1 warrant, dock receipt, warehouse receipt or order for the
 2 delivery of goods, and also any other document which in the
 3 regular course of business or financing is treated as
 4 adequately evidencing that the person in possession of it is
 5 entitled to receive, hold and dispose of the document and
 6 the goods it covers. To be a document of title a document
 7 must purport to be issued by or addressed to a bailee and
 8 purport to cover goods in the bailee's possession which are
 9 either identified or are fungible portions of an identified
 10 mass.

11 (16) "Fault" means wrongful act, omission or breach.

12 (17) "Fungible" with respect to goods or securities
 13 means goods or securities of which any unit is, by nature or
 14 usage of trade, the equivalent of any other like unit. Goods
 15 which are not fungible shall be deemed fungible for the
 16 purposes of this code to the extent that under a particular
 17 agreement or document unlike units are treated as
 18 equivalents.

19 (18) "Genuine" means free of forgery or counterfeiting.

20 (19) "Good faith" means honesty in fact in the conduct
 21 or transaction concerned.

22 (20) "Holder", with respect to a:

23 (a) negotiable instrument, means the person in
 24 possession if the instrument is payable to bearer or to the
 25 person in possession;

1 (b) certified security, means the person in possession
 2 is the registered owner, the security has been indorsed to
 3 the person in possession by the registered owner, or the
 4 security is in bearer form; or

5 (c) document of title, means a the person who-is in
 6 possession of-a-document-of-title--or--an--instrument--or--a
 7 certificated--investment-security-drawn, issued, or endorsed
 8 to-him-or-to-his-order-or if the goods are deliverable to
 9 bearer or in-blank to the order of the person in possession.

10 (21) To "honor" is to pay or to accept and pay, or where
 11 a credit so engages to purchase or discount a draft
 12 complying with the terms of the credit.

13 (22) "Insolvency proceedings" includes any assignment
 14 for the benefit of creditors or other proceedings intended
 15 to liquidate or rehabilitate the estate of the person
 16 involved.

17 (23) A person is "insolvent" who either has ceased to
 18 pay his debts in the ordinary course of business or cannot
 19 pay his debts as they become due or is insolvent within the
 20 meaning of the federal bankruptcy law.

21 (24) "Money" means a medium of exchange authorized or
 22 adopted by a domestic or foreign government ~~as-a-part-of-its~~
 23 currency or intergovernmental organization.

24 (25) A person has "notice" of a fact when:

25 (a) he has actual knowledge of it; or

1 (b) he has received a notice or notification of it; or
2 (c) from all the facts and circumstances known to him
3 at the time in question he has reason to know that it
4 exists. A person "knows" or has "knowledge" of a fact when
5 he has actual knowledge of it. "Discover" or "learn" or a
6 word or phrase of similar import refers to knowledge rather
7 than to reason to know. The time and circumstances under
8 which a notice or notification may cease to be effective are
9 not determined by this code.

10 (26) A person "notifies" or "gives" a notice or
11 notification to another by taking such steps as may be
12 reasonably required to inform the other in ordinary course
13 whether or not such other actually comes to know of it. A
14 person "receives" a notice or notification when:

15 (a) it comes to his attention; or

16 (b) it is duly delivered at the place of business
17 through which the contract was made or at any other place
18 held out by him as the place for receipt of such
19 communications.

20 (27) Notice, knowledge or a notice or notification
21 received by an organization is effective for a particular
22 transaction from the time when it is brought to the
23 attention of the individual conducting that transaction, and
24 in any event from the time when it would have been brought
25 to his attention if the organization had exercised due

1 diligence. An organization exercises due diligence if it
2 maintains reasonable routines for communicating significant
3 information to the person conducting the transaction and
4 there is reasonable compliance with the routines. Due
5 diligence does not require an individual acting for the
6 organization to communicate information unless such
7 communication is part of his regular duties or unless he has
8 reason to know of the transaction and that the transaction
9 would be materially affected by the information.

10 (28) "Organization" includes a corporation, government
11 or governmental subdivision or agency, business trust,
12 estate, trust, partnership or association, two or more
13 persons having a joint or common interest, or any other
14 legal or commercial entity.

15 (29) "Party" as distinct from "third party" means a
16 person who has engaged in a transaction or made an agreement
17 within this code.

18 (30) "Person" includes an individual or an organization.

19 (31) "Presumption" or "presumed" means that the trier of
20 fact must find the existence of the fact presumed unless and
21 until evidence is introduced which would support a finding
22 of its nonexistence.

23 (32) "Purchase" includes taking by sale, discount,
24 negotiation, mortgage, pledge, lien, issue or reissue, gift
25 or any other voluntary transaction creating an interest in

property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures which that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which that is subject to ~~Chapter~~ chapter 9. The special property interest of a buyer of goods on identification of such those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with ~~Chapter~~ chapter 9. Unless a ~~lease--or~~ consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment ~~is~~ in any event is subject to

the provisions on consignment sales (30-2-326). ~~Whether--a lease--is--intended--as--security--is--to--be--determined--by--the facts--of--each--case;--however,--(a)--the--inclusion--of--an--option to--purchase--does--not--of--itself--make--the--lease--one--intended for--security,--and--(b)--an--agreement--that--upon--compliance--with the--terms--of--the--lease--the--lessee--shall--become--or--has--the option--to--become--the--owner--of--the--property--for--no--additional consideration--or--for--a--nominal--consideration--does--make--the lease--one--intended--for--security.~~ Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the

1 goods for no additional consideration or nominal additional
 2 consideration upon compliance with the lease agreement.

3 (b) A transaction does not create a security interest
 4 merely because it provides that:

5 (i) the present value of the consideration the lessee
 6 is obligated to pay the lessor for the right to possession
 7 and use of the goods is substantially equal to or is greater
 8 than the fair market value of the goods at the time the
 9 lease is entered into;

10 (ii) the lessee assumes risk of loss of the goods or
 11 agrees to pay taxes, insurance, filing, recording, or
 12 registration fees or service or maintenance costs with
 13 respect to the goods;

14 (iii) the lessee has an option to renew the lease or to
 15 become the owner of the goods;

16 (iv) the lessee has an option to renew the lease for a
 17 fixed rent that is equal to or greater than the reasonably
 18 predictable fair market value for the use of the goods for
 19 the term of the renewal at the time the option is to be
 20 performed; or

21 (v) the lessee has an option to become the owner of the
 22 goods for a fixed price that is equal to or greater than the
 23 reasonably predictable fair market value of the goods at the
 24 time the option is to be performed.

25 (c) For purposes of this subsection (37):

1 (i) additional consideration is not nominal if:

2 (A) when the option to renew the lease is granted to
 3 the lessee, the rent is stated to be the fair market rent
 4 for the use of the goods for the term of the renewal
 5 determined at the time the option is to be performed; or

6 (B) when the option to become the owner of the goods is
 7 granted to the lessee, the price is stated to be the fair
 8 market value of the goods determined at the time the option
 9 is to be performed;

10 (ii) additional consideration is nominal if it is less
 11 than the lessee's reasonably predictable cost of performing
 12 under the lease agreement if the option is not exercised;

13 (iii) "reasonably predictable" and "remaining economic
 14 life of the goods" are to be determined with reference to
 15 the facts and circumstances at the time the transaction is
 16 entered into; and

17 (iv) "present value" means the amount as of a date
 18 certain of one or more sums payable in the future,
 19 discounted to the date certain. The discount is determined
 20 by the interest rate specified by the parties if the rate is
 21 not manifestly unreasonable at the time the transaction is
 22 entered into; otherwise, the discount is determined by a
 23 commercially reasonable rate that takes into account the
 24 facts and circumstances of each case at the time the
 25 transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or endorsement means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit

or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form."

Section 3. Section 30-1-207, MCA, is amended to read:

"30-1-207. Performance or acceptance under reservation of rights. (1) A party who that, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction."

Section 4. Section 30-2-103, MCA, is amended to read:

1 "30-2-103. Definitions and index of definitions. (1) In
2 this chapter, unless the context otherwise requires, the
3 following definitions apply:

4 (a) "Buyer" means a person who buys or contracts to buy
5 goods.

6 (b) "Good faith", in the case of a merchant, means
7 honesty in fact and the observance of reasonable commercial
8 standards of fair dealing in the trade.

9 (c) "Receipt" of goods means taking physical possession
10 of them.

11 (d) "Seller" means a person who sells or contracts to
12 sell goods.

13 (2) Other definitions applying to this chapter or to
14 specified parts thereof, and the sections in which they
15 appear are:

16 "Acceptance". 30-2-606.

17 "Banker's credit". 30-2-325.

18 "Between merchants". 30-2-104.

19 "Cancellation". 30-2-106(4).

20 "Commercial unit". 30-2-105.

21 "Confirmed credit". 30-2-325.

22 "Conforming to contract". 30-2-106.

23 "Contract for sale". 30-2-106.

24 "Cover". 30-2-712.

25 "Entrusting". 30-2-403.

1 "Financing agency". 30-2-104.

2 "Future goods". 30-2-105.

3 "Goods". 30-2-105.

4 "Identification". 30-2-501.

5 "Installment contract". 30-2-612.

6 "Letter of credit". 30-2-325.

7 "Lot". 30-2-105.

8 "Merchant". 30-2-104.

9 "Overseas". 30-2-323.

10 "Person in position of seller". 30-2-707.

11 "Present sale". 30-2-106.

12 "Sale". 30-2-106.

13 "Sale on approval". 30-2-326.

14 "Sale or return". 30-2-326.

15 "Termination". 30-2-106.

16 (3) The following definitions in other chapters apply
17 to this chapter:

18 "Check". 30-3-104.

19 "Consignee". 30-7-102.

20 "Consignor". 30-7-102.

21 "Consumer goods". 30-9-109.

22 "Dishonor". 30-3-507 [section 146].

23 "Draft". 30-3-104.

24 (4) In addition, Chapter chapter 1 contains general
25 definitions and principles of construction and

1 interpretation applicable throughout this chapter."

2 **Section 5.** Section 30-2-403, MCA, is amended to read:

3 **"30-2-403. Power to transfer -- good faith purchase of**
4 **goods -- "entrusting".** (1) A purchaser of goods acquires all
5 title which his transferor had or had power to transfer
6 except that a purchaser of a limited interest acquires
7 rights only to the extent of the interest purchased. A
8 person with voidable title has power to transfer a good
9 title to a good faith purchaser for value. When goods have
10 been delivered under a transaction of purchase the purchaser
11 has such power even though:

12 (a) the transferor was deceived as to the identity of
13 the purchaser;

14 (b) the delivery was in exchange for a check which is
15 later dishonored;

16 (c) it was agreed that the transaction was to be a
17 "cash sale"; or

18 (d) the delivery was procured through fraud punishable
19 as theft under the criminal law.

20 (2) Any entrusting of possession of goods to a merchant
21 who deals in goods of that kind gives him power to transfer
22 all rights of the entruster to a buyer in ordinary course of
23 business.

24 (3) "Entrusting" includes any delivery and any
25 acquiescence in retention of possession regardless of any

1 condition expressed between the parties to the delivery or
2 acquiescence and regardless of whether the procurement of
3 the entrusting or the possessor's disposition of the goods
4 has been such as to constitute theft under the criminal law.

5 (4) The rights of other purchasers of goods and of lien
6 creditors are governed by the chapters on secured
7 transactions (chapter 9); ~~bulk transfers~~ ~~(chapter 6)~~ and
8 documents of title (chapter 7)."

9 **Section 6.** Section 30-2-511, MCA, is amended to read:

10 **"30-2-511. Tender of payment by buyer -- payment by**
11 **check.** (1) Unless otherwise agreed, tender of payment is a
12 condition to the seller's duty to tender and complete any
13 delivery.

14 (2) Tender of payment is sufficient when made by any
15 means or in any manner current in the ordinary course of
16 business unless the seller demands payment in legal tender
17 and gives any extension of time reasonably necessary to
18 procure it.

19 (3) Subject to the provisions of this code on the
20 effect of an instrument on an obligation (30-3-802 [section
21 123]), payment by check is conditional and is defeated as
22 between the parties by dishonor of the check on due
23 presentment."

24 **NEW SECTION. Section 7.** Short title. {Sections 7
25 through 86} shall be known and may be cited as Uniform

Commercial Code--Leases.

NEW SECTION. Section 8. Scope. [Sections 7 through 86]

applies to any transaction, regardless of form, that creates a lease.

NEW SECTION. Section 9. Definitions and index of definitions. (1) In [sections 7 through 86] unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single

article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which

1 the lessor acquired the goods or the right to possession and
2 use of the goods before signing the lease contract;

3 (B) the lessee's approval of the contract by which the
4 lessor acquired the goods or the right to possession and use
5 of the goods is a condition to effectiveness of the lease
6 contract;

7 (C) the lessee, before signing the lease contract,
8 receives an accurate and complete statement designating the
9 promises and warranties, and any disclaimers of warranties,
10 limitations or modifications of remedies, or liquidated
11 damages, including those of a third party, such as the
12 manufacturer of the goods, provided to the lessor by the
13 person supplying the goods in connection with or as part of
14 the contract by which the lessor acquired the goods or the
15 right to possession and use of the goods; or

16 (D) if the lease is not a consumer lease, the lessor,
17 before the lessee signs the lease contract, informs the
18 lessee in writing:

19 (I) of the identity of the person supplying the goods
20 to the lessor, unless the lessee has selected that person
21 and directed the lessor to acquire the goods or the right to
22 possession and use of the goods from that person;

23 (II) that the lessee is entitled under [sections 7
24 through 86] to the promises and warranties, including those
25 of any third party, provided to the lessor by the person

1 supplying the goods in connection with or as part of the
2 contract by which the lessor acquired the goods or the right
3 to possession and use of the goods; and

4 (III) that the lessee may communicate with the person
5 supplying the goods to the lessor and receive an accurate
6 and complete statement of those promises and warranties,
7 including any disclaimers and limitations of them or of
8 remedies.

9 (h) "Goods" means all things that are movable at the
10 time of identification to the lease contract, or are
11 fixtures [(section 45)], but the term does not include
12 money, documents, instruments, accounts, chattel paper,
13 general intangibles, or minerals or the like, including oil
14 and gas, before extraction. The term also includes the
15 unborn young of animals.

16 (i) "Installment lease contract" means a lease contract
17 that authorizes or requires the delivery of goods in
18 separate lots to be separately accepted, even though the
19 lease contract contains a clause "each delivery is a
20 separate lease" or its equivalent.

21 (j) "Lease" means a transfer of the right to possession
22 and use of goods for a term in return for consideration, but
23 a sale, including a sale on approval or a sale or return, or
24 retention or creation of a security interest is not a lease.
25 Unless the context clearly indicates otherwise, the term

1 includes a sublease.

2 (k) "Lease agreement" means the bargain, with respect
3 to the lease, of the lessor and the lessee in fact as found
4 in their language or by implication from other
5 circumstances, including course of dealing or usage of trade
6 or course of performance as provided in [sections 7 through
7 86]. Unless the context clearly indicates otherwise, the
8 term includes a sublease agreement.

9 (l) "Lease contract" means the total legal obligation
10 that results from the lease agreement as affected by
11 [sections 7 through 86] and any other applicable rules of
12 law. Unless the context clearly indicates otherwise, the
13 term includes a sublease contract.

14 (m) "Leasehold interest" means the interest of the
15 lessor or the lessee under a lease contract.

16 (n) "Lessee" means a person who acquires the right to
17 possession and use of goods under a lease. Unless the
18 context clearly indicates otherwise, the term includes a
19 sublessee.

20 (o) "Lessee in ordinary course of business" means a
21 person, who in good faith and without knowledge that the
22 lease to him is in violation of the ownership rights or
23 security interest or leasehold interest of a third party in
24 the goods, leases in ordinary course from a person in the
25 business of selling or leasing goods of that kind, but the

1 term does not include a pawnbroker. "Leasing" may be for
2 cash or by exchange of other property or on secured or
3 unsecured credit and includes receiving goods or documents
4 of title under a preexisting lease contract but does not
5 include a transfer in bulk or as security for or in total or
6 partial satisfaction of a money debt.

7 (p) "Lessor" means a person who transfers the right to
8 possession and use of goods under a lease. Unless the
9 context clearly indicates otherwise, the term includes a
10 sublessor.

11 (q) "Lessor's residual interest" means the lessor's
12 interest in the goods after expiration, termination, or
13 cancellation of the lease contract.

14 (r) "Lien" means a charge against or interest in goods
15 to secure payment of a debt or performance of an obligation,
16 but the term does not include a security interest.

17 (s) "Lot" means a parcel or a single article that is
18 the subject matter of a separate lease or delivery, whether
19 or not it is sufficient to perform the lease contract.

20 (t) "Merchant lessee" means a lessee that is a merchant
21 with respect to goods of the kind subject to the lease.

22 (u) "Present value" means the amount as of a date
23 certain of one or more sums payable in the future,
24 discounted to the date certain. The discount is determined
25 by the interest rate specified by the parties if the rate

was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to [sections 7 through 86] and the sections in which they appear are:

(a) "Accessions". [Section 46(1)].

(b) "Construction mortgage". [Section 45(1)(d)].

(c) "Encumbrance". [Section 45(1)(e)].

(d) "Fixtures". [Section 45(1)(a)].

(e) "Fixture filing". [Section 45(1)(b)].

(f) "Purchase money lease". [Section 45(1)(c)].

(3) The following definitions in other chapters apply to [sections 7 through 86]:

(a) "Account". Section 30-9-106.

(b) "Between merchants". Section 30-2-104(3).

(c) "Buyer". Section 30-2-103(1)(a).

(d) "Chattel paper". Section 30-9-105(1)(b).

(e) "Consumer goods". Section 30-9-109(1).

(f) "Document". Section 30-9-105(1)(f).

(g) "Entrusting". Section 30-2-403(3).

(h) "General intangibles". Section 30-9-106.

(i) "Good faith". Section 30-2-103(1)(b).

(j) "Instrument". Section 30-9-105(1)(i).

(k) "Merchant". Section 30-2-104(1).

(l) "Mortgage". Section 30-9-105(1)(j).

(m) "Pursuant to commitment". Section 30-9-105(1)(k).

(n) "Receipt". Section 30-2-103(1)(c).

(o) "Sale". Section 30-2-106(1).

(p) "Sale on approval". Section 30-2-326.

(q) "Sale or return". Section 30-2-326.

(r) "Seller". Section 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout [sections 7 through 86].

NEW SECTION. Section 10. Leases subject to other law.

(1) A lease, although subject to [sections 7 through 86], is also subject to any applicable:

(a) certificate of title statute of this state;

(b) certificate of title statute of another jurisdiction {[section 11]}; or

(c) consumer protection statute of this state or final consumer protection decision of a court of this state existing on October 1, 1991.

(2) In case of conflict between [sections 7 through 86], other than [sections 11, 40(3), and 41(3)], and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

NEW SECTION. Section 11. Territorial application of chapter to goods covered by certificate of title. Subject to the provisions of [sections 40(3) and 41(3)], with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(1) surrender of the certificate; or

(2) 4 months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

NEW SECTION. Section 12. Limitation on power of

parties to consumer lease to choose applicable law and judicial forum. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

NEW SECTION. Section 13. Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

NEW SECTION. Section 14. Unconscionability. (1) If the court as a matter of law finds a lease contract or a clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, it may enforce the remainder of the lease

contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) if the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney fees to the lessee;

(b) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made;

(c) in determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

NEW SECTION. Section 15. Option to accelerate at will.

(1) A term providing that one party or his successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

NEW SECTION. Section 16. Statute of frauds. (1) A

lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been

1 made between the parties and to describe the goods leased
2 and the lease term.

3 (2) Any description of leased goods or of the lease
4 term is sufficient and satisfies subsection (1)(b), whether
5 or not it is specific, if it reasonably identifies what is
6 described.

7 (3) A writing is not insufficient because it omits or
8 incorrectly states a term agreed upon, but the lease
9 contract is not enforceable under subsection (1)(b) beyond
10 the lease term and the quantity of goods shown in the
11 writing.

12 (4) A lease contract that does not satisfy the
13 requirements of subsection (1), but which is valid in other
14 respects, is enforceable:

15 (a) if the goods are to be specially manufactured or
16 obtained for the lessee and are not suitable for lease or
17 sale to others in the ordinary course of the lessor's
18 business and the lessor, before notice of repudiation is
19 received and under circumstances that reasonably indicate
20 that the goods are for the lessee, has made either a
21 substantial beginning of their manufacture or commitments
22 for their procurement;

23 (b) if the party against whom enforcement is sought
24 admits in that party's pleading, testimony, or otherwise in
25 court that a lease contract was made but the lease contract

1 is not enforceable under this provision beyond the quantity
2 of goods admitted; or

3 (c) with respect to goods that have been received and
4 accepted by the lessee.

5 (5) The lease term under a lease contract referred to
6 in subsection (4) is:

7 (a) if there is a writing signed by the party against
8 whom enforcement is sought or by that party's authorized
9 agent specifying the lease term, the term so specified;

10 (b) if the party against whom enforcement is sought
11 admits in that party's pleading, testimony, or otherwise in
12 court a lease term, the term so admitted; or

13 (c) a reasonable lease term.

14 NEW SECTION. **Section 17.** Final written expression --
15 parol or extrinsic evidence. Terms with respect to which the
16 confirmatory memoranda of the parties agree or which are
17 otherwise set forth in a writing intended by the parties as
18 a final expression of their agreement with respect to such
19 terms as are included therein may not be contradicted by
20 evidence of any prior agreement or of a contemporaneous oral
21 agreement but may be explained or supplemented:

22 (1) by course of dealing or usage of trade or by course
23 of performance; and

24 (2) by evidence of consistent additional terms unless
25 the court finds the writing to have been intended also as a

1 complete and exclusive statement of the terms of the
2 agreement.

3 NEW SECTION. Section 18. Seals inoperative. The
4 affixing of a seal to a writing evidencing a lease contract
5 or an offer to enter into a lease contract does not render
6 the writing a sealed instrument, and the law with respect to
7 sealed instruments does not apply to the lease contract or
8 offer.

9 NEW SECTION. Section 19. Formation in general. (1) A
10 lease contract may be made in any manner sufficient to show
11 agreement, including conduct by both parties that recognizes
12 the existence of a lease contract.

13 (2) An agreement sufficient to constitute a lease
14 contract may be found although the moment of its making is
15 undetermined.

16 (3) Although one or more terms are left open, a lease
17 contract does not fail for indefiniteness if the parties
18 have intended to make a lease contract and there is a
19 reasonably certain basis for giving an appropriate remedy.

20 NEW SECTION. Section 20. Firm offers. An offer by a
21 merchant to lease goods to or from another person in a
22 signed writing that by its terms gives assurance it will be
23 held open is not revocable, for lack of consideration,
24 during the time stated or, if no time is stated, for a
25 reasonable time, but in no event may the period of

1 irrevocability exceed 3 months. Any such term of assurance
2 on a form supplied by the offeree must be separately signed
3 by the offeror.

4 NEW SECTION. Section 21. Offer and acceptance in
5 formation of lease contract. (1) Unless otherwise
6 unambiguously indicated by the language or circumstances, an
7 offer to make a lease contract must be construed as inviting
8 acceptance in any manner and by any medium reasonable in the
9 circumstances.

10 (2) If the beginning of a requested performance is a
11 reasonable mode of acceptance, an offeror who is not
12 notified of acceptance within a reasonable time may treat
13 the offer as having lapsed before acceptance.

14 NEW SECTION. Section 22. Course of performance or
15 practical construction. (1) If a lease contract involves
16 repeated occasions for performance by either party with
17 knowledge of the nature of the performance and opportunity
18 for objection to it by the other, any course of performance
19 accepted or acquiesced in without objection is relevant to
20 determine the meaning of the lease agreement.

21 (2) The express terms of a lease agreement and any
22 course of performance, as well as any course of dealing and
23 usage of trade, must be construed whenever reasonable as
24 consistent with each other; but if that construction is
25 unreasonable, express terms control course of performance,

1 course of performance controls both course of dealing and
2 usage of trade, and course of dealing controls usage of
3 trade.

4 (3) Subject to the provisions of [section 23] on
5 modification and waiver, course of performance is relevant
6 to show a modification or waiver of any term inconsistent
7 with the course of performance.

8 NEW SECTION. **Section 23.** Modification, rescission, and
9 waiver. (1) An agreement modifying a lease contract needs no
10 consideration to be binding.

11 (2) A signed lease agreement that excludes modification
12 or rescission except by a signed writing may not be
13 otherwise modified or rescinded, but, except as between
14 merchants, such a requirement on a form supplied by a
15 merchant must be separately signed by the other party.

16 (3) Although an attempt at modification or rescission
17 does not satisfy the requirements of subsection (2), it may
18 operate as a waiver.

19 (4) A party who has made a waiver affecting an
20 executory portion of a lease contract may retract the waiver
21 by reasonable notification received by the other party that
22 strict performance will be required of any term waived,
23 unless the retraction would be unjust in view of a material
24 change of position in reliance on the waiver.

25 NEW SECTION. **Section 24.** Lessee under finance lease as

1 beneficiary of supply contract. (1) The benefit of a
2 supplier's promises to the lessor under the supply contract
3 and of all warranties, whether express or implied, including
4 those of any third party provided in connection with or as
5 part of the supply contract, extends to the lessee to the
6 extent of the lessee's leasehold interest under a finance
7 lease related to the supply contract but is subject to the
8 terms of the warranty and of the supply contract and all
9 defenses or claims arising therefrom.

10 (2) The extension of the benefit of a supplier's
11 promises and of warranties to the lessee provided for under
12 subsection (1) does not:

13 (a) modify the rights and obligations of the parties to
14 the supply contract, whether arising therefrom or otherwise;
15 or

16 (b) impose any duty or liability under the supply
17 contract on the lessee.

18 (3) Any modification or rescission of the supply
19 contract by the supplier and the lessor is effective between
20 the supplier and the lessee unless before the modification
21 or rescission the supplier has received notice that the
22 lessee has entered into a finance lease related to the
23 supply contract. If the modification or rescission is
24 effective between the supplier and the lessee, the lessor is
25 considered to have assumed, in addition to the obligation

of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier that arise from an agreement between the lessee and the supplier or under other law.

NEW SECTION. Section 25. Express warranties. (1)

Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods that is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention

to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

NEW SECTION. Section 26. Warranties against

interference and against infringement -- lessee's obligation against infringement. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, that will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor, who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

NEW SECTION. Section 27. Implied warranty of

merchantability. (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods

1 of that kind.

2 (2) Goods to be merchantable must be at least such as:

3 (a) pass without objection in the trade under the
4 description in the lease agreement;

5 (b) in the case of fungible goods, are of fair average
6 quality within the description;

7 (c) are fit for the ordinary purposes for which goods
8 of that type are used;

9 (d) run, within the variation permitted by the lease
10 agreement, of even kind, quality, and quantity within each
11 unit and among all units involved;

12 (e) are adequately contained, packaged, and labeled as
13 the lease agreement may require; and

14 (f) conform to any promises or affirmations of fact
15 made on the container or label.

16 (3) Other implied warranties may arise from course of
17 dealing or usage of trade.

18 NEW SECTION. Section 28. Implied warranty of fitness
19 for particular purpose. Except in a finance lease, if the
20 lessor at the time the lease contract is made has reason to
21 know of any particular purpose for which the goods are
22 required and that the lessee is relying on the lessor's
23 skill or judgment to select or furnish suitable goods, there
24 is in the lease contract an implied warranty that the goods
25 will be fit for that purpose.

1 NEW SECTION. Section 29. Exclusion or modification of
2 warranties. (1) Words or conduct relevant to the creation of
3 an express warranty and words or conduct tending to negate
4 or limit a warranty must be construed whenever reasonable as
5 consistent with each other; but, subject to the provisions
6 of [section 17] on parol or extrinsic evidence, negation or
7 limitation is inoperative to the extent that the
8 construction is unreasonable.

9 (2) Subject to subsection (3), to exclude or modify the
10 implied warranty of merchantability or any part of it, the
11 language must mention "merchantability", be by a writing,
12 and be conspicuous. Subject to subsection (3), to exclude or
13 modify any implied warranty of fitness, the exclusion must
14 be by a writing and be conspicuous. Language to exclude all
15 implied warranties of fitness is sufficient if it is in
16 writing, is conspicuous, and states, for example, "There is
17 no warranty that the goods will be fit for a particular
18 purpose".

19 (3) Notwithstanding subsection (2), but subject to
20 subsection (4):

21 (a) unless the circumstances indicate otherwise, all
22 implied warranties are excluded by expressions, such as "as
23 is" or "with all faults", or by other language that in
24 common understanding calls the lessee's attention to the
25 exclusion of warranties and makes plain that there is no

1 implied warranty, if in writing and conspicuous;

2 (b) if the lessee before entering into the lease
3 contract has examined the goods or the sample or model as
4 fully as desired or has refused to examine the goods, there
5 is no implied warranty with regard to defects that an
6 examination ought in the circumstances to have revealed; and

7 (c) an implied warranty may also be excluded or
8 modified by course of dealing, course of performance, or
9 usage of trade.

10 (4) To exclude or modify a warranty against
11 interference or against infringement ([section 26]) or any
12 part of it, the language must be specific, be by a writing,
13 and be conspicuous, unless the circumstances, including
14 course of performance, course of dealing, or usage of trade,
15 give the lessee reason to know that the goods are being
16 leased subject to a claim or interest of any person.

17 NEW SECTION. Section 30. Cumulation and conflict of
18 warranties express or implied. Warranties, whether express
19 or implied, must be construed as consistent with each other
20 and as cumulative, but if that construction is unreasonable,
21 the intention of the parties determines which warranty is
22 dominant. In ascertaining that intention, the following
23 rules apply:

24 (1) Exact or technical specifications displace an
25 inconsistent sample or model or general language of

1 description.

2 (2) A sample from an existing bulk displaces
3 inconsistent general language of description.

4 (3) Express warranties displace inconsistent implied
5 warranties other than an implied warranty of fitness for a
6 particular purpose.

7 NEW SECTION. Section 31. Third-party beneficiaries of
8 express and implied warranties. A warranty to or for the
9 benefit of a lessee under [sections 7 through 86], whether
10 express or implied, extends to any natural person who is in
11 the family or household of the lessee or who is a guest in
12 the lessee's home if it is reasonable to expect that such
13 person may use, consume, or be affected by the goods and who
14 is injured in person by breach of the warranty. This section
15 does not displace principles of law and equity that extend a
16 warranty to or for the benefit of a lessee to other persons.
17 The operation of this section may not be excluded, modified,
18 or limited, but an exclusion, modification, or limitation of
19 the warranty, including any with respect to rights and
20 remedies, effective against the lessee is also effective
21 against any beneficiary designated under this section.

22 NEW SECTION. Section 32. Identification.

23 Identification of goods as goods to which a lease contract
24 refers may be made at any time and in any manner explicitly
25 agreed to by the parties. In the absence of explicit

1 agreement, identification occurs:

2 (1) when the lease contract is made if the lease
3 contract is for a lease of goods that are existing and
4 identified;

5 (2) when the goods are shipped, marked, or otherwise
6 designated by the lessor as goods to which the lease
7 contract refers, if the lease contract is for a lease of
8 goods that are not existing and identified; or

9 (3) when the young are conceived, if the lease contract
10 is for a lease of unborn young of animals.

11 NEW SECTION. Section 33. Insurance and proceeds. (1) A
12 lessee obtains an insurable interest when existing goods are
13 identified to the lease contract even though the goods
14 identified are nonconforming and the lessee has an option to
15 reject them.

16 (2) If a lessee has an insurable interest only by
17 reason of the lessor's identification of the goods, the
18 lessor, until default or insolvency or notification to the
19 lessee that identification is final, may substitute other
20 goods for those identified.

21 (3) Notwithstanding a lessee's insurable interest under
22 subsections (1) and (2), the lessor retains an insurable
23 interest until an option to buy has been exercised by the
24 lessee and risk of loss has passed to the lessee.

25 (4) Nothing in this section impairs any insurable

1 interest recognized under any other statute or rule of law.

2 (5) The parties by agreement may determine that one or
3 more parties have an obligation to obtain and pay for
4 insurance covering the goods and by agreement may determine
5 the beneficiary of the proceeds of the insurance.

6 NEW SECTION. Section 34. Risk of loss. (1) Except in
7 the case of a finance lease, risk of loss is retained by the
8 lessor and does not pass to the lessee. In the case of a
9 finance lease, risk of loss passes to the lessee.

10 (2) Subject to the provisions of [sections 7 through
11 86] on the effect of default on risk of loss ([section 35]),
12 if risk of loss is to pass to the lessee and the time of
13 passage is not stated, the following rules apply:

14 (a) If the lease contract requires or authorizes the
15 goods to be shipped by carrier and it does not require
16 delivery at a particular destination, the risk of loss
17 passes to the lessee when the goods are duly delivered to
18 the carrier, but if it does require delivery at a particular
19 destination and the goods are there duly tendered while in
20 the possession of the carrier, the risk of loss passes to
21 the lessee when the goods are there duly so tendered as to
22 enable the lessee to take delivery.

23 (b) If the goods are held by a bailee to be delivered
24 without being moved, the risk of loss passes to the lessee
25 on acknowledgment by the bailee of the lessee's right to

1 possession of the goods.

2 (c) In any case not within subsection (2)(a) or (2)(b),
3 the risk of loss passes to the lessee on the lessee's
4 receipt of the goods if the lessor or, in the case of a
5 finance lease, the supplier is a merchant; otherwise the
6 risk passes to the lessee on tender of delivery.

7 NEW SECTION. Section 35. Effect of default on risk of
8 loss. (1) When risk of loss is to pass to the lessee and the
9 time of passage is not stated:

10 (a) if a tender or delivery of goods so fails to
11 conform to the lease contract as to give a right of
12 rejection, the risk of their loss remains with the lessor
13 or, in the case of a finance lease, the supplier until cure
14 or acceptance.

15 (b) if the lessee rightfully revokes acceptance, he, to
16 the extent of any deficiency in his effective insurance
17 coverage, may treat the risk of loss as having remained with
18 the lessor from the beginning.

19 (2) Whether or not risk of loss is to pass to the
20 lessee, if the lessee as to conforming goods already
21 identified to a lease contract repudiates or is otherwise in
22 default under the lease contract, the lessor or, in the case
23 of a finance lease, the supplier, to the extent of any
24 deficiency in his effective insurance coverage, may treat
25 the risk of loss as resting on the lessee for a commercially

1 reasonable time.

2 NEW SECTION. Section 36. Casualty to identified goods.

3 If a lease contract requires goods identified when the lease
4 contract is made and the goods suffer casualty without fault
5 of the lessee, the lessor, or the supplier before delivery
6 or if the goods suffer casualty before risk of loss passes
7 to the lessee pursuant to the lease agreement or [section
8 34], then:

9 (1) if the loss is total, the lease contract is
10 avoided; and

11 (2) if the loss is partial or the goods have so
12 deteriorated as to no longer conform to the lease contract,
13 the lessee may nevertheless demand inspection and at his
14 option either treat the lease contract as avoided or, except
15 in a finance lease that is not a consumer lease, accept the
16 goods with due allowance from the rent payable for the
17 balance of the lease term for the deterioration or the
18 deficiency in quantity but without further right against the
19 lessor.

20 NEW SECTION. Section 37. Enforceability of lease
21 contract. Except as otherwise provided in [sections 7
22 through 86], a lease contract is effective and enforceable
23 according to its terms between the parties, against
24 purchasers of the goods, and against creditors of the
25 parties.

NEW SECTION. Section 38. Title to and possession of goods. Except as otherwise provided in [sections 7 through 86], each provision of [sections 7 through 86] applies whether the lessor or a third party has title to the goods and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

NEW SECTION. Section 39. Alienability of party's interest under lease contract or of lessor's residual interest in goods -- delegation of performance -- transfer of rights. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 30, chapter 9, secured transactions, by reason of 30-9-102(1)(b).

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods or that makes such a transfer an event of default gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease

agreement is otherwise effective.

(3) (a) A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision.

(b) Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation or that makes such a transfer an event o

1 default is not enforceable, and such a transfer is not a
 2 transfer that materially impairs the prospect of obtaining
 3 return performance by, materially changes the duty of, or
 4 materially increases the burden or risk imposed on the other
 5 party to the lease contract within the purview of subsection
 6 (5).

7 (5) Subject to subsections (3) and (4):

8 (a) if a transfer is made which is made an event of
 9 default under a lease agreement, the party to the lease
 10 contract not making the transfer, unless that party waives
 11 the default or otherwise agrees, has the rights and remedies
 12 described in [section 55];

13 (b) if subsection (5)(a) is not applicable and if a
 14 transfer is made that is prohibited under a lease agreement
 15 or that materially impairs the prospect of obtaining return
 16 performance by, materially changes the duty of, or
 17 materially increases the burden or risk imposed on the other
 18 party to the lease contract, unless the party not making the
 19 transfer agrees at any time to the transfer in the lease
 20 contract or otherwise, then, except as limited by contract:

21 (i) the transferor is liable to the party not making
 22 the transfer for damages caused by the transfer to the
 23 extent that the damages could not reasonably be prevented by
 24 the party not making the transfer; and

25 (ii) a court having jurisdiction may grant other

1 appropriate relief, including cancellation of the lease
 2 contract or an injunction against the transfer.

3 (6) A transfer of "the lease" or of "all my rights
 4 under the lease" or a transfer in similar general terms is a
 5 transfer of rights, and unless the language or the
 6 circumstances, as in a transfer for security, indicate the
 7 contrary, the transfer is a delegation of duties by the
 8 transferor to the transferee. Acceptance by the transferee
 9 constitutes a promise by the transferee to perform those
 10 duties. The promise is enforceable by either the transferor
 11 or the other party to the lease contract.

12 (7) Unless otherwise agreed by the lessor and the
 13 lessee, a delegation of performance does not relieve the
 14 transferor as against the other party of any duty to perform
 15 or of any liability for default.

16 (8) In a consumer lease, to prohibit the transfer of an
 17 interest of a party under the lease contract or to make a
 18 transfer an event of default, the language must be specific,
 19 by a writing, and conspicuous.

20 NEW SECTION. Section 40. Subsequent lease of goods by
 21 lessor. (1) Subject to [section 39], a subsequent lessee
 22 from a lessor of goods under an existing lease contract
 23 obtains, to the extent of the leasehold interest
 24 transferred, the leasehold interest in the goods that the
 25 lessor had or had power to transfer and, except as provided

1 in subsection (2) and [section 81(4)], takes subject to the
 2 existing lease contract. A lessor with voidable title has
 3 power to transfer a good leasehold interest to a good faith
 4 subsequent lessee for value, but only to the extent set
 5 forth in the preceding sentence. If goods have been
 6 delivered under a transaction of purchase, the lessor has
 7 that power even though:

8 (a) the lessor's transferor was deceived as to the
 9 identity of the lessor;

10 (b) the delivery was in exchange for a check that is
 11 later dishonored;

12 (c) it was agreed that the transaction was to be a
 13 "cash sale"; or

14 (d) the delivery was procured through fraud punishable
 15 as larcenous under the criminal law.

16 (2) A subsequent lessee in the ordinary course of
 17 business from a lessor who is a merchant dealing in goods of
 18 that kind to whom the goods were entrusted by the existing
 19 lessee of that lessor before the interest of the subsequent
 20 lessee became enforceable against that lessor obtains, to
 21 the extent of the leasehold interest transferred, all of
 22 that lessor's and the existing lessee's rights to the goods
 23 and takes free of the existing lease contract.

24 (3) A subsequent lessee from the lessor of goods that
 25 are subject to an existing lease contract and are covered by

1 a certificate of title issued under a statute of this state
 2 or of another jurisdiction takes no greater rights than
 3 those provided both by this section and by the certificate
 4 of title statute.

5 NEW SECTION. **Section 41.** Sale or sublease of goods by

6 lessee. (1) Subject to the provisions of [section 39], a
 7 buyer or sublessee from the lessee of goods under an
 8 existing lease contract obtains, to the extent of the
 9 interest transferred, the leasehold interest in the goods
 10 that the lessee had or had power to transfer and, except as
 11 provided in subsection (2) and [section 65(4)], takes
 12 subject to the existing lease contract. A lessee with a
 13 voidable leasehold interest has power to transfer a good
 14 leasehold interest to a good faith buyer for value or a good
 15 faith sublessee for value, but only to the extent set forth
 16 in the preceding sentence. When goods have been delivered
 17 under a transaction of lease, the lessee has that power even
 18 though:

19 (a) the lessor was deceived as to the identity of the
 20 lessee;

21 (b) the delivery was in exchange for a check that is
 22 later dishonored; or

23 (c) the delivery was procured through fraud punishable
 24 as larcenous under the criminal law.

25 (2) A buyer in the ordinary course of business or a

1 sublessee in the ordinary course of business from a lessee
 2 who is a merchant dealing in goods of that kind to whom the
 3 goods were entrusted by the lessor obtains, to the extent of
 4 the interest transferred, all of the lessor's and lessee's
 5 rights to the goods and takes free of the existing lease
 6 contract.

7 (3) A buyer or sublessee from the lessee of goods that
 8 are subject to an existing lease contract and are covered by
 9 a certificate of title issued under a statute of this state
 10 or of another jurisdiction takes no greater rights than
 11 those provided both by this section and by the certificate
 12 of title statute.

13 NEW SECTION. Section 42. Priority of certain liens
 14 arising by operation of law. If a person in the ordinary
 15 course of business furnishes services or materials with
 16 respect to goods subject to a lease contract, a lien upon
 17 those goods in the possession of that person given by
 18 statute or rule of law for those materials or services takes
 19 priority over any interest of the lessor or lessee under the
 20 lease contract or [sections 7 through 86] unless the lien is
 21 created by statute and the statute provides otherwise or
 22 unless the lien is created by rule of law and the rule of
 23 law provides otherwise.

24 NEW SECTION. Section 43. Priority of liens arising by
 25 attachment or levy on, security interests in, and other

1 claims to goods. (1) Except as otherwise provided in
 2 [section 42], a creditor of a lessee takes subject to the
 3 lease contract.

4 (2) Except as otherwise provided in subsections (3) and
 5 (4) and in [sections 42 and 44], a creditor of a lessor
 6 takes subject to the lease contract unless:

7 (a) the creditor holds a lien that attached to the
 8 goods before the lease contract became enforceable;

9 (b) the creditor holds a security interest in the goods
 10 and the lessee did not give value and receive delivery of
 11 the goods without knowledge of the security interest; or

12 (c) the creditor holds a security interest in the goods
 13 that was perfected (30-9-303) before the lease contract
 14 became enforceable.

15 (3) A lessee in the ordinary course of business takes
 16 the leasehold interest free of a security interest in the
 17 goods created by the lessor even though the security
 18 interest is perfected (30-9-303) and the lessee knows of its
 19 existence.

20 (4) A lessee other than a lessee in the ordinary course
 21 of business takes the leasehold interest free of a security
 22 interest to the extent that it secures future advances made
 23 after the secured party acquires knowledge of the lease or
 24 more than 45 days after the lease contract becomes
 25 enforceable, whichever occurs first, unless the future

advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

NEW SECTION. Section 44. Special rights of creditors.

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in [sections 7 through 86] impairs the rights of creditors of a lessor if the lease contract:

(a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like; and

(b) is made under circumstances that under any statute or rule of law apart from [sections 7 through 86] would constitute the transaction as a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease

contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

NEW SECTION. Section 45. Lessor's and lessee's rights when goods become fixtures. (1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real

1 estate that are not ownership interests.

2 (2) Under [sections 7 through 86], a lease may be of
3 goods that are fixtures or may continue in goods that become
4 fixtures, but no lease exists under [sections 7 through 86]
5 of ordinary building materials incorporated into an
6 improvement on land.

7 (3) [Sections 7 through 86] do not prevent creation of
8 a lease of fixtures pursuant to real estate law.

9 (4) The perfected interest of a lessor of fixtures has
10 priority over a conflicting interest of an encumbrancer or
11 owner of the real estate if:

12 (a) the lease is a purchase money lease, the
13 conflicting interest of the encumbrancer or owner arises
14 before the goods become fixtures, the interest of the lessor
15 is perfected by a fixture filing before the goods become
16 fixtures or within 10 days thereafter, and the lessee has an
17 interest of record in the real estate or is in possession of
18 the real estate; or

19 (b) the interest of the lessor is perfected by a
20 fixture filing before the interest of the encumbrancer or
21 owner is of record, the lessor's interest has priority over
22 any conflicting interest of a predecessor in title of the
23 encumbrancer or owner, and the lessee has an interest of
24 record in the real estate or is in possession of the real
25 estate.

1 (5) The interest of a lessor of fixtures, whether or
2 not perfected, has priority over the conflicting interest of
3 an encumbrancer or owner of the real estate if:

4 (a) the fixtures are readily removable factory or
5 office machines, readily removable equipment that is not
6 primarily used or leased for use in the operation of the
7 real estate, or readily removable replacements of domestic
8 appliances that are goods subject to a consumer lease, and
9 before the goods become fixtures the lease contract is
10 enforceable;

11 (b) the conflicting interest is a lien on the real
12 estate obtained by legal or equitable proceedings after the
13 lease contract is enforceable;

14 (c) the encumbrancer or owner has consented in writing
15 to the lease or has disclaimed an interest in the goods as
16 fixtures; or

17 (d) the lessee has a right to remove the goods as
18 against the encumbrancer or owner. If the lessee's right to
19 remove terminates, the priority of the interest of the
20 lessor continues for a reasonable time.

21 (6) Notwithstanding the provisions of subsection (4)(a)
22 but otherwise subject to the provisions of subsections (4)
23 and (5), the interest of a lessor of fixtures, including the
24 lessor's residual interest, is subordinate to the
25 conflicting interest of an encumbrancer of the real estate

under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the provisions of subsections (1) through (6), priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and (sections 7 through 86) or if necessary to enforce other rights and remedies of the lessor or lessee under (sections 7 through 86), remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate. However, the lessor or lessee shall

reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (Title 30, chapter 9).

NEW SECTION. **Section 46. Lessor's and lessee's rights**

when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired

1 interests in the whole except as stated in subsection (4)
 2 but is subordinate to interests in the whole existing at the
 3 time the lease contract was made unless the holders of such
 4 interests in the whole have in writing consented to the
 5 lease or disclaimed an interest in the goods as part of the
 6 whole.

7 (4) The interest of a lessor or a lessee under a lease
 8 contract described in subsection (2) or (3) is subordinate
 9 to the interest of:

10 (a) a buyer in the ordinary course of business or a
 11 lessee in the ordinary course of business of any interest in
 12 the whole acquired after the goods became accessions; or

13 (b) a creditor with a security interest in the whole
 14 perfected before the lease contract was made to the extent
 15 that the creditor makes subsequent advances without
 16 knowledge of the lease contract.

17 (5) When under subsections (2) and (4) or (3) and (4) a
 18 lessor or a lessee of accessions holds an interest that is
 19 superior to all interests in the whole, the lessor or the
 20 lessee may, on default, expiration, termination, or
 21 cancellation of the lease contract by the other party but
 22 subject to the provisions of the lease contract and
 23 [sections 7 through 86] or if necessary to enforce his other
 24 rights and remedies under [sections 7 through 86], remove
 25 the goods from the whole, free and clear of all interests in

1 the whole, but he must reimburse any holder of an interest
 2 in the whole who is not the lessee and who has not otherwise
 3 agreed to the cost of repair of any physical injury but not
 4 for any diminution in value of the whole caused by the
 5 absence of the goods removed or by any necessity for
 6 replacing them. A person entitled to reimbursement may
 7 refuse permission to remove until the party seeking removal
 8 gives adequate security for the performance of this
 9 obligation.

10 NEW SECTION. **Section 47.** Priority subject to
 11 subordination. Nothing in [sections 7 through 86] prevents
 12 subordination by agreement by any person entitled to
 13 priority.

14 NEW SECTION. **Section 48.** Insecurity -- adequate
 15 assurance of performance. (1) A lease contract imposes an
 16 obligation on each party that the other's expectation of
 17 receiving due performance will not be impaired.

18 (2) If reasonable grounds for insecurity arise with
 19 respect to the performance of either party, the insecure
 20 party may demand in writing adequate assurance of due
 21 performance. Until the insecure party receives that
 22 assurance, if commercially reasonable, the insecure party
 23 may suspend any performance for which he has not already
 24 received the agreed return.

25 (3) A repudiation of the lease contract occurs if

assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

NEW SECTION. Section 49. Anticipatory repudiation. If

either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) make demand pursuant to [section 48] and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy upon default under the lease contract or [sections 7 through 86], even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's

performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of [sections 7 through 86] on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods ([section 78]).

NEW SECTION. Section 50. Retraction of anticipatory

repudiation. (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under [section 48].

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

NEW SECTION. Section 51. Substituted performance. (1)

If without fault of the lessee, the lessor, and the supplier the agreed berthing, loading, or unloading facilities fail,

1 the agreed type of carrier becomes unavailable, or the
2 agreed manner of delivery otherwise becomes commercially
3 impracticable, but a commercially reasonable substitute is
4 available, the substitute performance must be tendered and
5 accepted.

6 (2) If the agreed means or manner of payment fails
7 because of domestic or foreign governmental regulation the
8 lessor may withhold or stop delivery or cause the supplier
9 to withhold or stop delivery unless the lessee provides a
10 means or manner of payment that is commercially a
11 substantial equivalent and if delivery has already been
12 taken, payment by the means or in the manner provided by the
13 regulation discharges the lessee's obligation unless the
14 regulation is discriminatory, oppressive, or predatory.

15 NEW SECTION. Section 52. Excused performance. Subject
16 to [section 51] on substituted performance, the following
17 rules apply:

18 (1) Delay in delivery or nondelivery in whole or in
19 part by a lessor or a supplier who complies with subsections
20 (2) and (3) is not a default under the lease contract if
21 performance as agreed has been made impracticable by the
22 occurrence of a contingency the nonoccurrence of which was a
23 basic assumption on which the lease contract was made or by
24 compliance in good faith with any applicable foreign or
25 domestic governmental regulation or order, whether or not

1 the regulation or order later proves to be invalid.

2 (2) If the causes mentioned in subsection (1) affect
3 only part of the lessor's or the supplier's capacity to
4 perform, he shall allocate production and deliveries among
5 his customers but at his option may include regular
6 customers not then under contract for sale or lease as well
7 as his own requirements for further manufacture. He may so
8 allocate in any manner that is fair and reasonable.

9 (3) The lessor seasonably shall notify the lessee and,
10 in the case of a finance lease, the supplier seasonably
11 shall notify the lessor and the lessee, if known, that there
12 will be delay or nondelivery and, if allocation is required
13 under subsection (2), of the estimated quota thus made
14 available for the lessee.

15 NEW SECTION. Section 53. Procedure on excused
16 performance. (1) If the lessee receives notification of a
17 material or indefinite delay or an allocation justified
18 under [section 52], the lessee may by written notification
19 to the lessor as to any goods involved and with respect to
20 all of the goods if under an installment lease contract the
21 value of the whole lease contract is substantially impaired
22 ([section 64]):

23 (a) terminate the lease contract ([section 59(2)]); or
24 (b) except in a finance lease that is not a consumer
25 lease, modify the lease contract by accepting the available

1 quota in substitution, with due allowance from the rent
2 payable for the balance of the lease term for the deficiency
3 but without further right against the lessor.

4 (2) If, after receipt of a notification from the lessor
5 under [section 49], the lessee fails so to modify the lease
6 agreement within a reasonable time not exceeding 30 days,
7 the lease contract lapses with respect to any deliveries
8 affected.

9 NEW SECTION. Section 54. Irrevocable promises --
10 finance leases. (1) In the case of a finance lease that is
11 not a consumer lease, the lessee's promises under the lease
12 contract become irrevocable and independent upon the
13 lessee's acceptance of the goods.

14 (2) A promise that has become irrevocable and
15 independent under subsection (1):

16 (a) is effective and enforceable between the parties
17 and by or against third parties, including assignees of the
18 parties; and

19 (b) is not subject to cancellation, termination,
20 modification, repudiation, excuse, or substitution without
21 the consent of the party to whom the promise runs.

22 (3) This section does not affect the validity under any
23 other law of a covenant in any lease contract making the
24 lessee's promises irrevocable and independent upon the
25 lessee's acceptance of the goods.

1 NEW SECTION. Section 55. Default -- procedure. (1)
2 Whether the lessor or the lessee is in default under a lease
3 contract is determined by the lease agreement and [sections
4 7 through 86].

5 (2) If the lessor or the lessee is in default under the
6 lease contract, the party seeking enforcement has rights and
7 remedies as provided in [sections 7 through 86] and, except
8 as limited by [sections 7 through 86], as provided in the
9 lease agreement.

10 (3) If the lessor or the lessee is in default under the
11 lease contract, the party seeking enforcement may reduce the
12 party's claim to judgment or otherwise enforce the lease
13 contract by self-help or any available judicial procedure or
14 nonjudicial procedure, including administrative proceeding,
15 arbitration, or the like, in accordance with [sections 7
16 through 86].

17 (4) Except as otherwise provided in 30-1-106(1),
18 [sections 7 through 86], or the lease agreement, the rights
19 and remedies referred to in subsections (2) and (3) are
20 cumulative.

21 (5) If the lease agreement covers both real property
22 and goods, the party seeking enforcement may proceed under
23 [sections 55 through 86] as to the goods or under other
24 applicable law as to both the real property and the goods in
25 accordance with that party's rights and remedies in respect

1 of the real property, in which case [sections 55 through 86]
2 do not apply.

3 NEW SECTION. Section 56. Notice after default. Except
4 as otherwise provided in [sections 7 through 86] or the
5 lease agreement, the lessor or lessee in default under the
6 lease contract is not entitled to notice of default or
7 notice of enforcement from the other party to the lease
8 agreement.

9 NEW SECTION. Section 57. Modification or impairment of
10 rights and remedies. (1) Except as otherwise provided in
11 [sections 7 through 86], the lease agreement may include
12 rights and remedies for default in addition to or in
13 substitution for those provided in [sections 7 through 86]
14 and may limit or alter the measure of damages recoverable
15 under [sections 7 through 86].

16 (2) Resort to a remedy provided under [sections 7
17 through 86] or in the lease agreement is optional unless the
18 remedy is expressly agreed to be exclusive. If circumstances
19 cause an exclusive or limited remedy to fail of its
20 essential purpose or provision for an exclusive remedy is
21 unconscionable, remedy may be had as provided in [sections 7
22 through 86].

23 (3) Consequential damages may be liquidated under
24 [section 58] or may otherwise be limited, altered, or
25 excluded unless the limitation, alteration, or exclusion is

1 unconscionable. Limitation, alteration, or exclusion of
2 consequential damages for injury to the person in the case
3 of consumer goods is prima facie unconscionable, but
4 limitation, alteration, or exclusion of damages where the
5 loss is commercial is not prima facie unconscionable.

6 (4) Rights and remedies on default by the lessor or the
7 lessee with respect to any obligation or promise collateral
8 or ancillary to the lease contract are not impaired by
9 [sections 7 through 86].

10 NEW SECTION. Section 58. Liquidation of damages. (1)
11 Damages payable by either party for default or any other act
12 or omission, including indemnity for loss or diminution of
13 anticipated tax benefits or loss or damage to a lessor's
14 residual interest, may be liquidated in the lease agreement
15 but only at an amount or by a formula that is reasonable in
16 light of the then anticipated harm caused by the default or
17 other act or omission.

18 (2) If the lease agreement provides for liquidation of
19 damages and such provision does not comply with subsection
20 (1) or if such provision is an exclusive or limited remedy
21 that circumstances cause to fail of its essential purpose,
22 remedy may be had as provided in [sections 7 through 86].

23 (3) If the lessor justifiably withholds or stops
24 delivery of goods because of the lessee's default or
25 insolvency ([section 79 or 80]), the lessee is entitled to

1 restitution of any amount by which the sum of his payments
2 exceeds:

3 (a) the amount to which the lessor is entitled by
4 virtue of terms liquidating the lessor's damages in
5 accordance with subsection (1); or

6 (b) in the absence of those terms, 20% of the then
7 present value of the total rent the lessee was obligated to
8 pay for the balance of the lease term or, in the case of a
9 consumer lease, the lesser of such amount or \$500.

10 (4) A lessee's right to restitution under subsection
11 (3) is subject to offset to the extent the lessor
12 establishes:

13 (a) a right to recover damages under the provisions of
14 [sections 7 through 86] other than subsection (1); and

15 (b) the amount or value of any benefits received by the
16 lessee directly or indirectly by reason of the lease
17 contract.

18 NEW SECTION. Section 59. Cancellation and termination
19 -- effect of cancellation, termination, rescission, or fraud
20 on rights and remedies. (1) On cancellation of the lease
21 contract, all obligations that are still executory on both
22 sides are discharged but any right based on prior default or
23 performance survives, and the canceling party also retains
24 any remedy for default of the whole lease contract or any
25 unperformed balance.

1 (2) On termination of the lease contract, all
2 obligations that are still executory on both sides are
3 discharged but any right based on prior default or
4 performance survives.

5 (3) Unless the contrary intention clearly appears,
6 expressions of "cancellation", "rescission", or the like of
7 the lease contract may not be construed as a renunciation or
8 discharge of any claim in damages for an antecedent default.

9 (4) Rights and remedies for material misrepresentation
10 or fraud include all rights and remedies available under
11 [sections 7 through 86] for default.

12 (5) Neither rescission nor a claim for rescission of
13 the lease contract nor rejection or return of the goods may
14 bar or be considered inconsistent with a claim for damages
15 or other right or remedy.

16 NEW SECTION. Section 60. Statute of limitations. (1)
17 An action for default under a lease contract, including
18 breach of warranty or indemnity, must be commenced within 4
19 years after the cause of action accrued. By the original
20 lease contract, the parties may reduce the period of
21 limitation to not less than 1 year.

22 (2) A cause of action for default accrues when the act
23 or omission on which the default or breach of warranty is
24 based is or should have been discovered by the aggrieved
25 party or when the default occurs, whichever is later. A

cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations, nor does it apply to causes of action that have accrued before [sections 7 through 86] becomes effective.

NEW SECTION. Section 61. Proof of market rent -- time and place. (1) Damages based on market rent [section 73 or 82] are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the

times or places described in [sections 7 through 86] is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in [sections 7 through 86] offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

NEW SECTION. Section 62. Lessee's remedies. (1) If a lessor fails to deliver the goods in conformity to the lease contract ([section 63]) or repudiates the lease contract ([section 49]) or if a lessee rightfully rejects the goods

1 ([section 63]) or justifiably revokes acceptance of the
 2 goods ([section 71]), then with respect to any goods
 3 involved and with respect to all of the goods if under an
 4 installment lease contract the value of the whole lease
 5 contract is substantially impaired ([section 64]), the
 6 lessor is in default under the lease contract and the lessee
 7 may:

8 (a) cancel the lease contract ([section 59(1)]);

9 (b) recover so much of the rent and security as has
 10 been paid and is just under the circumstances;

11 (c) cover and recover damages as to all goods affected
 12 whether or not they have been identified to the lease
 13 contract ([sections 72 and 74]) or recover damages for
 14 nondelivery ([sections 73 and 74]);

15 (d) exercise any other rights or pursue any other
 16 remedies provided in the lease contract.

17 (2) If a lessor fails to deliver the goods in
 18 conformity to the lease contract or repudiates the lease
 19 contract, the lessee may also:

20 (a) if the goods have been identified, recover them
 21 ([section 76]); or

22 (b) in a proper case, obtain specific performance or
 23 replevy the goods ([section 75]).

24 (3) If a lessor is otherwise in default under a lease
 25 contract, the lessee may exercise the rights and pursue the

1 remedies provided in the lease contract, which may include a
 2 right to cancel the lease, and in [section 73(3)].

3 (4) If a lessor has breached a warranty, whether
 4 express or implied, the lessee may recover damages ([section
 5 73(4)]).

6 (5) On rightful rejection or justifiable revocation of
 7 acceptance, a lessee has a security interest in goods in the
 8 lessee's possession or control for any rent and security
 9 that has been paid and any expenses reasonably incurred in
 10 their inspection, receipt, transportation, and care and
 11 custody and may hold those goods and dispose of them in good
 12 faith and in a commercially reasonable manner, subject to
 13 [section 81(5)].

14 (6) Subject to the provisions of [section 54], a
 15 lessee, on notifying the lessor of the lessee's intention to
 16 do so, may deduct all or any part of the damages resulting
 17 from any default under the lease contract from any part of
 18 the rent still due under the same lease contract.

19 **NEW SECTION. Section 63. Lessee's rights on improper**
 20 **delivery -- rightful rejection.** (1) Subject to the
 21 provisions of [section 64] on default in installment lease
 22 contracts, if the goods or the tender or delivery fail in
 23 any respect to conform to the lease contract, the lessee may
 24 reject or accept the goods or accept any commercial unit or
 25 units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

NEW SECTION. Section 64. Installment lease contracts -- rejection and default. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

NEW SECTION. Section 65. Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a lessee ([section 62(5)]), if a lessor or a supplier has no agent or place of business at the market of

rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee ([section 66]) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with this section or [section 66], the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or [section 66] takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the

1 requirements of [sections 7 through 86].

2 NEW SECTION. Section 66. Lessee's duties as to
3 rightfully rejected goods. (1) Except as otherwise provided
4 with respect to goods that threaten to decline in value
5 speedily ([section 65]) and subject to any security interest
6 of a lessee ([section 62(5)]):

7 (a) the lessee, after rejection of goods in the
8 lessee's possession, shall hold them with reasonable care at
9 the lessor's or the supplier's disposition for a reasonable
10 time after the lessee's seasonable notification of
11 rejection;

12 (b) if the lessor or the supplier gives no instructions
13 within a reasonable time after notification of rejection,
14 the lessee may store the rejected goods for the lessor's or
15 the supplier's account, ship them to the lessor or the
16 supplier, or dispose of them for the lessor's or the
17 supplier's account with reimbursement in the manner provided
18 in [section 65]; but

19 (c) the lessee has no further obligations with regard
20 to goods rightfully rejected.

21 (2) Action by the lessee pursuant to subsection (1) is
22 not acceptance or conversion.

23 NEW SECTION. Section 67. Cure by lessor of improper
24 tender or delivery -- replacement. (1) If any tender or
25 delivery by the lessor or the supplier is rejected because

1 it is nonconforming and the time for performance has not yet
2 expired, the lessor or the supplier may seasonably notify
3 the lessee of the lessor's or the supplier's intention to
4 cure and may then make a conforming delivery within the time
5 provided in the lease contract.

6 (2) If the lessee rejects a nonconforming tender that
7 the lessor or the supplier had reasonable grounds to believe
8 would be acceptable with or without money allowance, the
9 lessor or the supplier may have a further reasonable time to
10 substitute a conforming tender if he seasonably notifies the
11 lessee.

12 NEW SECTION. Section 68. Waiver of lessee's
13 objections. (1) In rejecting goods, a lessee's failure to
14 state a particular defect that is ascertainable by
15 reasonable inspection precludes the lessee from relying on
16 the defect to justify rejection or to establish default:

17 (a) if, stated seasonably, the lessor or the supplier
18 could have cured it ([section 67]); or

19 (b) between merchants if the lessor or the supplier
20 after rejection has made a request in writing for a full and
21 final written statement of all defects on which the lessee
22 proposes to rely.

23 (2) A lessee's failure to reserve rights when paying
24 rent or other consideration against documents precludes
25 recovery of the payment for defects apparent on the face of

1 the documents.

2 NEW SECTION. **Section 69.** Acceptance of goods. (1)

3 Acceptance of goods occurs after the lessee has had a
4 reasonable opportunity to inspect the goods and:

5 (a) the lessee signifies or acts with respect to the
6 goods in a manner that signifies to the lessor or the
7 supplier that the goods are conforming or that the lessee
8 will take or retain them in spite of their nonconformity; or

9 (b) the lessee fails to make an effective rejection of
10 the goods ([section 63(2)]).

11 (2) Acceptance of a part of any commercial unit is
12 acceptance of that entire unit.

13 NEW SECTION. **Section 70.** Effect of acceptance of goods

14 -- notice of default -- burden of establishing default after
15 acceptance -- notice of claim or litigation to person
16 answerable over. (1) A lessee shall pay rent for any goods
17 accepted in accordance with the lease contract, with due
18 allowance for goods rightfully rejected or not delivered.

19 (2) A lessee's acceptance of goods precludes rejection
20 of the goods accepted. In the case of a finance lease, if
21 made with knowledge of a nonconformity, acceptance may not
22 be revoked because of it. In any other case, if made with
23 knowledge of a nonconformity, acceptance may not be revoked
24 because of it unless the acceptance was on the reasonable
25 assumption that the nonconformity would be seasonably cured.

1 Acceptance does not of itself impair any other remedy
2 provided by [sections 7 through 86] or the lease agreement
3 for nonconformity.

4 (3) If a tender has been accepted:

5 (a) within a reasonable time after the lessee discovers
6 or should have discovered any default, the lessee shall
7 notify the lessor and the supplier, if any, or be barred
8 from any remedy against the party not notified;

9 (b) except in the case of a consumer lease, within a
10 reasonable time after the lessee receives notice of
11 litigation for infringement or the like ([section 26]) the
12 lessee shall notify the lessor or be barred from any remedy
13 over for liability established by the litigation; and

14 (c) the burden is on the lessee to establish any
15 default.

16 (4) If a lessee is sued for breach of a warranty or
17 other obligation for which a lessor or a supplier is
18 answerable over, the following apply:

19 (a) The lessee may give the lessor or the supplier, or
20 both, written notice of the litigation. If the notice states
21 that the person notified may come in and defend and that if
22 the person notified does not do so that person will be bound
23 in any action against that person by the lessee by any
24 determination of fact common to the two litigations, then
25 unless the person notified after seasonable receipt of the

1 notice does come in and defend, that person is so bound.

2 (b) The lessor or the supplier may demand in writing
3 that the lessee turn over control of the litigation,
4 including settlement if the claim is one for infringement or
5 the like ([section 26]) or else be barred from any remedy
6 over. If the demand states that the lessor or the supplier
7 agrees to bear all expense and to satisfy any adverse
8 judgment, then unless the lessee after seasonable receipt of
9 the demand does turn over control, the lessee is so barred.

10 (5) Subsections (3) and (4) apply to any obligation of
11 a lessee to hold the lessor or the supplier harmless against
12 infringement or the like ([section 26]).

13 NEW SECTION. Section 71. Revocation of acceptance of
14 goods. (1) A lessee may revoke acceptance of a lot or
15 commercial unit the nonconformity of which substantially
16 impairs its value to the lessee if the lessee has accepted
17 it:

18 (a) except in the case of a finance lease, on the
19 reasonable assumption that its nonconformity would be cured
20 and it has not been seasonably cured; or

21 (b) without discovery of the nonconformity if the
22 lessee's acceptance was reasonably induced either by the
23 lessor's assurances or, except in the case of a finance
24 lease, by the difficulty of discovery before acceptance.

25 (2) Except in the case of a finance lease that is not a

1 consumer lease, a lessee may revoke acceptance of a lot or
2 commercial unit if the lessor defaults under the lease
3 contract and the default substantially impairs the value of
4 that lot or commercial unit to the lessee.

5 (3) If the lease agreement so provides, the lessee may
6 revoke acceptance of a lot or commercial unit because of
7 other defaults by the lessor.

8 (4) Revocation of acceptance must occur within a
9 reasonable time after the lessee discovers or should have
10 discovered the ground for it and before any substantial
11 change in condition of the goods that is not caused by the
12 nonconformity. Revocation is not effective until the lessee
13 notifies the lessor.

14 (5) A lessee who so revokes has the same rights and
15 duties with regard to the goods involved as if the lessee
16 had rejected them.

17 NEW SECTION. Section 72. Cover -- substitute goods.

18 (1) After a default by a lessor under the lease contract of
19 the type described in {section 62(1)} or, if agreed, after
20 other default by the lessor, the lessee may cover by making
21 any purchase or lease of or contract to purchase or lease
22 goods in substitution for those due from the lessor.

23 (2) Except as otherwise provided with respect to
24 damages liquidated in the lease agreement ({section 58}) or
25 otherwise determined pursuant to agreement of the parties

(30-1-102(3) and [section 57]), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and [section 73] governs.

NEW SECTION. Section 73. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement ([section 58]) or otherwise determined pursuant to agreement

of the parties (30-1-102(3) and [section 57]), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under [section 72(2)] or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification ([section 70(3)]), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages

1 for breach of warranty is the present value at the time and
 2 place of acceptance of the difference between the value of
 3 the use of the goods accepted and the value if they had been
 4 as warranted for the lease term, unless special
 5 circumstances show proximate damages of a different amount,
 6 together with incidental and consequential damages, less
 7 expenses saved in consequence of the lessor's default or
 8 breach of warranty.

9 NEW SECTION. Section 74. Lessee's incidental and
 10 consequential damages. (1) Incidental damages resulting from
 11 a lessor's default include expenses reasonably incurred in
 12 inspection, receipt, transportation, and care and custody of
 13 goods rightfully rejected or goods the acceptance of which
 14 is justifiably revoked; any commercially reasonable charges;
 15 expenses or commissions in connection with effecting cover;
 16 and any other reasonable expense incident to the default.

17 (2) Consequential damages resulting from a lessor's
 18 default include:

19 (a) any loss resulting from general or particular
 20 requirements and needs of which the lessor at the time of
 21 contracting had reason to know and that could not reasonably
 22 be prevented by cover or otherwise; and

23 (b) injury to person or property proximately resulting
 24 from any breach of warranty.

25 NEW SECTION. Section 75. Lessee's right to specific

1 performance or replevin. (1) Specific performance may be
 2 decreed if the goods are unique or in other proper
 3 circumstances.

4 (2) A decree for specific performance may include any
 5 terms and conditions as to payment of the rent, damages, or
 6 other relief that the court considers just.

7 (3) A lessee has a right of replevin, detinue,
 8 sequestration, claim and delivery, or the like for goods
 9 identified to the lease contract if after reasonable effort
 10 the lessee is unable to effect cover for those goods or the
 11 circumstances reasonably indicate that the effort will be
 12 unavailing.

13 NEW SECTION. Section 76. Lessee's right to goods on
 14 lessor's insolvency. (1) Subject to subsection (2) and even
 15 though the goods have not been shipped, a lessee who has
 16 paid a part or all of the rent and security for goods
 17 identified to a lease contract ([section 32]) on making and
 18 keeping good a tender of any unpaid portion of the rent and
 19 security due under the lease contract may recover the goods
 20 identified from the lessor if the lessor becomes insolvent
 21 within 10 days after receipt of the first installment of
 22 rent and security.

23 (2) A lessee acquires the right to recover goods
 24 identified to a lease contract only if they conform to the
 25 lease contract.

1 **NEW SECTION. Section 77. Lessor's remedies.** (1) If a
 2 lessee wrongfully rejects or revokes acceptance of goods,
 3 fails to make a payment when due, or repudiates with respect
 4 to a part or the whole, then with respect to any goods
 5 involved and with respect to all of the goods if under an
 6 installment lease contract the value of the whole lease
 7 contract is substantially impaired ([section 64]), the
 8 lessee is in default under the lease contract and the lessor
 9 may:

10 (a) cancel the lease contract ([section 59(1)]);

11 (b) proceed respecting goods not identified to the
 12 lease contract ([section 78]);

13 (c) withhold delivery of the goods and take possession
 14 of goods previously delivered ([section 79]);

15 (d) stop delivery of the goods by any bailee ([section
 16 80]);

17 (e) dispose of the goods and recover damages ([section
 18 81]), retain the goods and recover damages ([section 82]),
 19 or in a proper case, recover rent ([section 83]);

20 (f) exercise any other rights or pursue any other
 21 remedies provided in the lease contract.

22 (2) If a lessor does not fully exercise a right or
 23 obtain a remedy to which the lessor is entitled under
 24 subsection (1), the lessor may recover the loss resulting in
 25 the ordinary course of events from the lessee's default as

1 determined in any reasonable manner, together with
 2 incidental damages, less expenses saved in consequence of
 3 the lessee's default.

4 (3) If a lessee is otherwise in default under a lease
 5 contract, the lessor may exercise the rights and pursue the
 6 remedies provided in the lease contract, which may include a
 7 right to cancel the lease. In addition, unless otherwise
 8 provided in the lease contract:

9 (a) if the default substantially impairs the value of
 10 the lease contract to the lessor, the lessor may exercise
 11 the rights and pursue the remedies provided in subsection
 12 (1) or (2); or

13 (b) if the default does not substantially impair the
 14 value of the lease contract to the lessor, the lessor may
 15 recover as provided in subsection (2).

16 **NEW SECTION. Section 78. Lessor's right to identify**
 17 **goods to lease contract.** (1) A lessor aggrieved under
 18 [section 77(1)] may:

19 (a) identify to the lease contract conforming goods not
 20 already identified if at the time the lessor learned of the
 21 default they were in the lessor's or the supplier's
 22 possession or control; and

23 (b) dispose of goods ([section 81(1)]) that
 24 demonstrably have been intended for the particular lease
 25 contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

NEW SECTION. Section 79. Lessor's right to possession of goods. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in [section 77(1) or (3)(a)] or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor that is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business and may dispose of goods on the lessee's premises ([section 81]).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

NEW SECTION. Section 80. Lessor's stoppage of delivery

in transit or otherwise. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

NEW SECTION. Section 81. Lessor's rights to dispose of goods. (1) After a default by a lessee under the lease contract described in [section 77(1) or (3)(a)] or after the lessor refuses to deliver or takes possession of goods ([section 79 or 80]) or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement ([section 58]) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and [section 57]), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to

the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under [section 84] less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and [section 82] governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of [sections 7 through 86].

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest ([section 62(5)]).

NEW SECTION. Section 82. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement ([section 58]) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and [section 57]), if a lessor elects to retain

1 the goods or a lessor elects to dispose of the goods and the
 2 disposition is by lease agreement that for any reason does
 3 not qualify for treatment under [section 81(2)] or is by
 4 sale or otherwise, the lessor may recover from the lessee as
 5 damages for a default of the type described in [section
 6 77(1) or (3)(a)] or, if agreed, for other default of the
 7 lessee:

8 (a) accrued and unpaid rent as of the date of default
 9 if the lessee has never taken possession of the goods or, if
 10 the lessee has taken possession of the goods, as of the date
 11 the lessor repossesses the goods or an earlier date on which
 12 the lessee makes a tender of the goods to the lessor;

13 (b) the present value as of the date determined under
 14 subsection (1)(a) of the total rent for the then remaining
 15 lease term of the original lease agreement minus the present
 16 value as of the same date of the market rent at the place
 17 where the goods are located, computed for the same lease
 18 term; and

19 (c) any incidental damages allowed under [section 84]
 20 less expenses saved in consequence of the lessee's default.

21 (2) If the measure of damages provided in subsection
 22 (1) is inadequate to put a lessor in as good a position as
 23 performance would have, the measure of damages is the
 24 present value of the profit, including reasonable overhead,
 25 that the lessor would have made from full performance by the

1 lessee, together with any incidental damages allowed under
 2 [section 84], allowance due for costs reasonably incurred,
 3 and credit due for payments or proceeds of disposition.

4 NEW SECTION. Section 83. Lessor's action for rent. (1)
 5 After default by the lessee under the lease contract of the
 6 type described in [section 77(1) or (3)(a)] or, if agreed,
 7 after other default by the lessee, if the lessor complies
 8 with subsection (2), the lessor may recover from the lessee
 9 as damages:

10 (a) for goods accepted by the lessee and not
 11 repossessed by or tendered to the lessor and for conforming
 12 goods lost or damaged within a commercially reasonable time
 13 after risk of loss passes to the lessee ([section 34]):

14 (i) accrued and unpaid rent as of the date of entry of
 15 judgment in favor of the lessor;

16 (ii) the present value as of the same date of the rent
 17 for the then remaining lease term of the lease agreement;
 18 and

19 (iii) any incidental damages allowed under [section 84]
 20 less expenses saved in consequence of the lessee's default;
 21 and

22 (b) for goods identified to the lease contract if the
 23 lessor is unable after reasonable effort to dispose of them
 24 at a reasonable price or the circumstances reasonably
 25 indicate that effort will be unavailing;

1 (i) accrued and unpaid rent as of the date of entry of
 2 judgment in favor of the lessor;
 3 (ii) the present value as of the same date of the rent
 4 for the then remaining lease term of the lease agreement;
 5 and
 6 (iii) any incidental damages allowed under [section 84]
 7 less expenses saved in consequence of the lessee's default.
 8 (2) Except as provided in subsection (3), the lessor
 9 shall hold for the lessee for the remaining lease term of
 10 the lease agreement any goods that have been identified to
 11 the lease contract and are in the lessor's control.
 12 (3) The lessor may dispose of the goods at any time
 13 before collection of the judgment for damages obtained
 14 pursuant to subsection (1). If the disposition is before the
 15 end of the remaining lease term of the lease agreement, the
 16 lessor's recovery against the lessee for damages is governed
 17 by [section 81 or 82] and the lessor will cause an
 18 appropriate credit to be provided against a judgment for
 19 damages to the extent that the amount of the judgment
 20 exceeds the recovery available pursuant to [section 81 or
 21 82].
 22 (4) Payment of the judgment for damages obtained
 23 pursuant to subsection (1) entitles the lessee to the use
 24 and possession of the goods not then disposed of for the
 25 remaining lease term of and in accordance with the lease

1 agreement.

2 (5) After a lessee has wrongfully rejected or revoked
 3 acceptance of goods, has failed to pay rent then due, or has
 4 repudiated ([section 49]), a lessor who is held not entitled
 5 to rent under this section must nevertheless be awarded
 6 damages for nonacceptance under [sections 81 and 82].

7 NEW SECTION. **Section 84. Lessor's incidental damages.**
 8 Incidental damages to an aggrieved lessor include any
 9 commercially reasonable charges, expenses, or commissions
 10 incurred in stopping delivery; in the transportation, care,
 11 and custody of goods after the lessee's default; in
 12 connection with return or disposition of the goods; or
 13 otherwise resulting from the default.

14 NEW SECTION. **Section 85. Standing to sue third parties**
 15 **for injury to goods.** (1) If a third party so deals with
 16 goods that have been identified to a lease contract as to
 17 cause actionable injury to a party to the lease contract:
 18 (a) the lessor has a right of action against the third
 19 party; and
 20 (b) the lessee also has a right of action against the
 21 third party if the lessee:
 22 (i) has a security interest in the goods;
 23 (ii) has an insurable interest in the goods; or
 24 (iii) bears the risk of loss under the lease contract or
 25 has since the injury assumed that risk as against the lessor

1 and the goods have been converted or destroyed.

2 (2) If at the time of the injury the party plaintiff
3 did not bear the risk of loss as against the other party to
4 the lease contract and there is no arrangement between them
5 for disposition of the recovery, his suit or settlement,
6 subject to his own interest, is as a fiduciary for the other
7 party to the lease contract.

8 (3) Either party with the consent of the other may sue
9 for the benefit of whom it may concern.

10 NEW SECTION. Section 86. Lessor's rights to residual
11 interest. In addition to any other recovery permitted by
12 [sections 7 through 86] or other law, the lessor may recover
13 from the lessee an amount that will fully compensate the
14 lessor for any loss of or damage to the lessor's residual
15 interest in the goods caused by the default of the lessee.

16 **Section 87.** Section 30-3-101, MCA, is amended to read:

17 "30-3-101. Short title. This chapter shall be known and
18 may be cited as Uniform Commercial Code--~~Commercial~~--Paper
19 Negotiable Instruments."

20 NEW SECTION. Section 88. Subject matter. (1) This
21 chapter applies to negotiable instruments. It does not apply
22 to money or to payment orders governed by [sections 189
23 through 226]. A negotiable instrument that is also a
24 certificated security under 30-8-102(1)(a) is subject to
25 chapter 8 and to this chapter.

1 (2) In the event of conflict between the provisions of
2 this chapter and those of chapter 4, chapter 8, or chapter
3 9, the provisions of chapter 4, chapter 8, and chapter 9
4 prevail over those of this chapter.

5 (3) Regulations of the board of governors of the
6 federal reserve system and operating circulars of the
7 federal reserve banks supersede any inconsistent provision
8 of this chapter to the extent of the inconsistency.

9 **Section 89.** Section 30-3-102, MCA, is amended to read:

10 "30-3-102. Definitions and index of definitions. (1) In
11 this chapter, unless the context otherwise requires, the
12 following definitions apply:

13 (a) "Issue"--means--the first delivery of an instrument
14 to a holder or a remitter; "Acceptor" means a drawee that
15 has accepted a draft.

16 (b) "Drawee" means a person ordered in a draft to make
17 payment.

18 (c) "Drawer" means a person that signs a draft as a
19 person ordering payment.

20 (d) "Good faith" means honesty in fact and the
21 observance of reasonable commercial standards of fair
22 dealing.

23 (e) "Maker" means a person that signs a note as
24 promisor of payment.

25 (f) An "order" is--a--direction means a

1 written instruction to pay and--must--be--more--than--an
 2 authorization-or-request money signed by the person giving
 3 the instruction. It--must--identify-the-person-to-pay-with
 4 reasonable-certainty--it-may-be-addressed--to--one--or--more
 5 such The instruction may be addressed to any person,
 6 including the person giving the instruction, or to one or
 7 more persons jointly or in the alternative but not in
 8 succession. An authorization to pay is not an order unless
 9 the person authorized to pay is also instructed to pay.

10 (g) "Ordinary care" in the case of a person engaged in
 11 business means observance of reasonable commercial
 12 standards, prevailing in the area in which that person is
 13 located, with respect to the business in which that person
 14 is engaged. In the case of a bank that takes an instrument
 15 for processing for collection or payment by automated means,
 16 reasonable commercial standards do not require the bank to
 17 examine the instrument if the failure to examine does not
 18 violate the bank's prescribed procedures and the bank's
 19 procedures do not vary unreasonably from general banking
 20 usage not disapproved by this chapter or chapter 4.

21 (h) "Party" means party to an instrument.

22 (i) A-"promise" "Promise" is--an means a written
 23 undertaking to pay money signed by the person undertaking to
 24 pay. and--must--be--more--than--an--acknowledgment-of-an An
 25 acknowledgment of an obligation by the obligor is not a

1 promise unless the obligor also undertakes to pay the
 2 obligation.

3 (d)--"Secondary-party"--means-a-drawer-or-endorser;

4 (e)--"Instrument"--means-a-negotiable-instrument;

5 (j) "Prove" with respect to a fact means to meet the
 6 burden of establishing the fact (30-1-201(8)).

7 (k) "Remitter" means a person that purchases an
 8 instrument from its issuer if the instrument is payable to
 9 an identified person other than the purchaser;

10 (2) Other definitions applying to this chapter and the
 11 sections in which they appear are:

12 "Acceptance". 30-3-410.

13 "Accommodated party". 30-3-415.

14 "Accommodation party". 30-3-415.

15 "Alteration". 30-3-407.

16 "Anomalous indorsement". 30-3-204.

17 "Blank indorsement". 30-3-204.

18 "Cashier's check". 30-3-104.

19 "Certificate of deposit". 30-3-104.

20 "Certified check". 30-3-410.

21 "Certification". 30-3-411.

22 "Check". 30-3-104.

23 "Consideration". 30-3-303.

24 "Definite time". 30-3-109.

25 "Dishonor". 30-3-507.

1 "Draft". 30-3-104.
 2 "Fiduciary". [section 120].
 3 "Holder in due course". 30-3-302.
 4 "Incomplete instrument". 30-3-115.
 5 "Indorsement". 30-3-203.
 6 "Indorser". 30-3-203.
 7 "Instrument". 30-3-104.
 8 "Issue". [section 91].
 9 "Issuer". [section 91].
 10 "Negotiable instrument". 30-3-104.
 11 "Negotiation". 30-3-202.
 12 "Note". 30-3-104.
 13 ~~"Notice-of-dishonor". 30-3-508.~~
 14 ~~"On-demand". 30-3-108.~~
 15 "Payable at a definite time". 30-3-109.
 16 "Payable on demand". 30-3-108.
 17 "Payable to bearer". 30-3-111.
 18 "Payable to order". 30-3-111.
 19 "Payment". 30-3-603.
 20 "Person entitled to enforce". 30-3-301.
 21 "Presentment". 30-3-504.
 22 ~~"Protest". 30-3-509.~~
 23 "Reacquisition". 30-3-208.
 24 "Represented person". [section 120].
 25 ~~"Restrictive-endorsement". 30-3-205.~~

1 ~~"Signature". 30-3-401.~~
 2 "Special indorsement". 30-3-204.
 3 "Teller's check". 30-3-104.
 4 "Transfer of instrument". [section 109].
 5 "Traveler's check". 30-3-104.
 6 "Value". 30-3-303.
 7 (3) The following definitions in other chapters apply
 8 to this chapter:
 9 ~~"Account". 30-4-104.~~
 10 "Bank". 30-4-105.
 11 "Banking day". 30-4-104.
 12 "Clearinghouse". 30-4-104.
 13 "Collecting bank". 30-4-105.
 14 "Customer". 30-4-104.
 15 "Depository bank". 30-4-105.
 16 "Documentary draft". 30-4-104.
 17 "Intermediary bank". 30-4-105.
 18 "Item". 30-4-104.
 19 ~~"Midnight-deadline". 30-4-104.~~
 20 "Payor bank". 30-4-105.
 21 "Suspends payments". 30-4-104.
 22 (4) In addition, Chapter chapter 1 contains general
 23 definitions and principles of construction and
 24 interpretation applicable throughout this chapter."
 25 **Section 90.** Section 30-3-104, MCA, is amended to read:

1 "30-3-104. Form-of-negotiable-instruments----"draft"---
 2 "check"-----"certificate-of-deposit"-----"note" Negotiable
 3 instrument. (1) Any-writing-to-be-a--negotiable--instrument
 4 within-this-chapter-must:
 5 {a}--be-signed-by-the-maker-or-drawer;-and
 6 {b}--contain "Negotiable instrument" means an
 7 unconditional promise or order to pay a sum-certain-in fixed
 8 amount of money, and-no-other-promise;-order;-obligation--or
 9 power--given--by-the-maker-or-drawer-except-as-authorized-by
 10 this-chapter;-and with or without interest or other charges
 11 described in the promise or order, if it:
 12 {a} is payable to bearer or to order at the time it is
 13 issued or first comes into possession of a holder;
 14 {c}{b} be is payable on demand or at a definite time;
 15 and
 16 {d}--be-payable-to-order-or-to-bearer
 17 {c} does not state any other undertaking or instruction
 18 by the person promising or ordering payment to do any act in
 19 addition to the payment of money except that the promise or
 20 order may contain:
 21 {i} an undertaking or power to give, maintain, or
 22 protect collateral to secure payment;
 23 {ii} an authorization or power to the holder to confess
 24 judgment or realize on or dispose of collateral; or
 25 {iii} a waiver of the benefit of any law intended for

1 the advantage or protection of any obligor.
 2 (2) A--writing--which-complies-with-the-requirements-of
 3 this-section-is:
 4 {a}--a--"draft"--("bill-of-exchange")-if-it-is-an-order;
 5 {b}--a--"check"-if-it-is-a-draft--drawn--on--a--bank--and
 6 payable-on-demand;
 7 {c}--a--"certificate---of---deposit"---if---it---is---an
 8 acknowledgment-by--a--bank--of--receipt--of--money--with--an
 9 engagement-to-repay-it;
 10 {d}--a--"note"---if--it--is--a--promise--other--than--a
 11 certificate-of-deposit;
 12 {3}--As-used-in-other-chapters-of-this-code,-and-as--the
 13 context---may---require,---the---terms---"draft",---"check",
 14 "certificate-of-deposit"-and-"note"-may-refer-to-instruments
 15 which--are--not-negotiable-within-this-chapter-as-well-as-to
 16 instruments-which-are-so-negotiable: "Instrument" means a
 17 negotiable instrument.
 18 (3) An order that meets all of the requirements of
 19 subsection (1) except subsection (1)(a) and otherwise falls
 20 within the definition of "check" in subsection (6) is a
 21 negotiable instrument and a check.
 22 (4) Notwithstanding the provisions of subsection (1), a
 23 promise or order other than a check is not an instrument if,
 24 at the time it is issued or first comes into possession of a
 25 holder, it contains a conspicuous statement, however

1 expressed, indicating that the writing is not an instrument
 2 governed by this chapter.

3 (5) An instrument is a "note" if it is a promise and is
 4 a "draft" if it is an order. If an instrument falls within
 5 the definition of both note and draft, the person entitled
 6 to enforce the instrument may treat it as either.

7 (6) (a) "Check" means:

8 (i) a draft, other than a documentary draft, payable on
 9 demand and drawn on a bank; or

10 (ii) a cashier's check or teller's check.

11 (b) An instrument may be a check even though it is
 12 described on its face by another term, such as "money
 13 order".

14 (7) "Cashier's check" means a draft with respect to
 15 which the drawer and drawee are the same bank or branches of
 16 the same bank.

17 (8) "Teller's check" means a draft drawn by a bank:

18 (a) on another bank; or

19 (b) payable at or through a bank.

20 (9) "Traveler's check" means an instrument that:

21 (a) is payable on demand;

22 (b) is drawn on or payable at or through a bank;

23 (c) is designated by the term traveler's check or by a
 24 substantially similar term; and

25 (d) requires, as a condition to payment, a

1 countersignature by a person whose specimen signature
 2 appears on the instrument.

3 (10) "Certificate of deposit" means an instrument
 4 containing an acknowledgment by a bank that a sum of money
 5 has been received by the bank and a promise by the bank to
 6 repay the sum of money. A certificate of deposit is a note
 7 of the bank."

8 NEW SECTION. Section 91. Issue of instrument. (1)

9 "Issue" means the first delivery of an instrument by the
 10 maker or drawer, whether to a holder or nonholder, for the
 11 purpose of giving rights on the instrument to any person.

12 (2) An unissued instrument or an unissued incomplete
 13 instrument (30-3-115) that is completed is binding on the
 14 maker or drawer, but nonissuance is a defense. An instrument
 15 that is conditionally issued or is issued for a special
 16 purpose is binding on the maker or drawer, but failure of
 17 the condition or special purpose to be fulfilled is a
 18 defense.

19 (3) "Issuer" applies to issued and unissued instruments
 20 and means any person that signs an instrument as maker or
 21 drawer.

22 Section 92. Section 30-3-105, MCA, is amended to read:

23 "30-3-105. When Unconditional promise or order
 24 unconditional. (1) (a) Except as provided in subsections
 25 (2) and (3), for the purposes of 30-3-104(1), a promise or

1 order otherwise is unconditional is-not-made-conditional--by
 2 the-fact-that-the-instrument unless it states:
 3 (i) an express condition to payment; or
 4 {a}--is--subject--to-implied-or-constructive-conditions;
 5 or
 6 {b}--states--its--consideration;--whether--performed--or
 7 promised;--or--the--transaction--which--gave--rise--to--the
 8 instrument;--or--that--the--promise--or-order-is-made-or-the
 9 instrument-matures-in--accordance--with--or--"as-per"--such
 10 transaction;--or
 11 {c}--refers--to--or--states--that--it--arises--out--of-a
 12 separate-agreement-or-refers-to--a--separate--agreement--for
 13 rights-as-to-prepayment-or-acceleration;--or
 14 {d}--states--that--it-is-drawn-under-a-letter-of-credit;
 15 or
 16 {e}--states-that-it-is--secured;--whether--by--mortgage;
 17 reservation-of-title-or-otherwise;--or
 18 {f}--indicates-a-particular-account-to-be-debited-or-any
 19 other--fund--or-source-from-which-reimbursement-is-expected;
 20 or
 21 {g}--is-limited-to-payment-out-of-a-particular--fund--or
 22 the--proceeds--of--a-particular-source;--if-the-instrument-is
 23 issued-by-a-government-or-governmental-agency-or-unit;--or
 24 {h}--is-limited-to-payment-out-of-the-entire-assets-of-a
 25 partnership;--unincorporated-association;--trust-or-estate--by

1 or-on-behalf-of-which-the-instrument-is-issued
 2 (ii) that the promise or order is subject to or governed
 3 by another writing or that the rights or obligations with
 4 respect to the promise or order are stated in another
 5 writing.
 6 (b) A mere reference to another writing does not make
 7 the promise or order conditional.
 8 (2) A promise or order is not unconditional--if--the
 9 instrument made conditional:
 10 (a) states--that--it--is--subject-to-or-governed-by-any
 11 other-agreement by a reference to another writing for a
 12 statement of rights with respect to collateral, prepayment,
 13 or acceleration; or
 14 (b) states-that-it-is-to-be-paid-only--out--of because
 15 payment is limited to or resorts to a particular fund or
 16 source except-as-provided-in-this-section.
 17 {3} If a promise or order requires, as a condition to
 18 payment, a countersignature by a person whose specimen
 19 signature appears on the promise or order, the condition
 20 does not make the promise or order conditional for the
 21 purposes of 30-3-104(1). If the person whose specimen
 22 signature appears on an instrument fails to countersign the
 23 instrument, the failure to countersign is a defense to the
 24 obligation of the issuer, but the failure does not prevent a
 25 transferee of the instrument from becoming a holder of the

1 instrument.

2 (4) If a promise or order at the time it is issued or
 3 first comes into possession of a holder contains a
 4 statement, required by applicable statutory or
 5 administrative law, to the effect that the rights of a
 6 holder or transferee are subject to claims or defenses that
 7 the issuer could assert against the original payee, the
 8 promise or order is not thereby made conditional for the
 9 purposes of 30-3-104(1), but there cannot be a holder in due
 10 course of the promise or order."

11 **Section 93.** Section 30-3-107, MCA, is amended to read:

12 **"30-3-107. Money Instrument payable in foreign money.**
 13 ~~{1}--An--instrument--is--payable--in--money--if--the--medium--of~~
 14 ~~exchange--in--which--it--is--payable--is--money--at--the--time--the~~
 15 ~~instrument--is--made--An--instrument--payable--in--"currency"--or~~
 16 ~~"current-funds"--is--payable--in--money.~~

17 {2}--A--promise--or--order--to--pay--a--sum--stated Unless the
 18 instrument otherwise provides, an instrument that states the
 19 amount payable in a foreign currency is for a sum certain in
 20 money and, unless a different medium of payment is specified
 21 in the instrument, may be satisfied by payment of that
 22 number of dollars which the stated paid in the foreign
 23 currency will purchase at the buying sight rate for that
 24 currency on the day on which the instrument is payable or,
 25 if payable on demand, on the day of demand, if such an

1 instrument specifies a foreign currency as the medium of
 2 payment the instrument is payable in that currency money or
 3 in an equivalent amount in dollars calculated by using the
 4 current bank-offered spot rate at the place of payment for
 5 the purchase of dollars on the day on which the instrument
 6 is paid."

7 **Section 94.** Section 30-3-108, MCA, is amended to read:

8 **"30-3-108. Payable on demand. Instruments A promise or**
 9 **order is "payable on demand" if: include those**

10 (1) it states that it is payable on demand or at sight
 11 or otherwise indicates that it is payable at the will of the
 12 holder; or

13 (2) on presentation and those in which no time for it
 14 does not state any time of payment is stated."

15 **Section 95.** Section 30-3-109, MCA, is amended to read:

16 **"30-3-109. Definite time. (1) An instrument A promise**
 17 **or order is "payable at a definite time" if by its terms it**
 18 **is payable on elapse of a definite period of time after**
 19 **sight or acceptance or at a fixed date or dates or at a time**
 20 **or times readily ascertainable at the time the promise or**
 21 **order is issued, subject to the rights of:**

22 (a) on or before a stated date or at a fixed period
 23 after a stated date prepayment; or

24 (b) at a fixed period after sight; or

25 (c) at a definite time subject to any acceleration; or

(d)(c) at--a--definite-time-subject-to extension at the option of the holder; or

(d) to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument--which--by--its--terms--is--otherwise payable--only--upon--an-act-or-event-uncertain-as-to-time-of occurrence-is-not-payable-at-a-definite-time-even-though-the act-or-event-has-occurred: If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date."

Section 96. Section 30-3-111, MCA, is amended to read:

"30-3-111. Payable to bearer or to order. (1) An instrument A promise or order is "payable to bearer" when-by its-terms-it-is-payable-to if it:

(a) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;
or

(b) a--specified--person--or--bearer does not state a payee; or

(c) "cash"-or states that it is payable to or to the

order of "cash"; or any--other-indication-which-does-not purport-to-designate-a-specific--payee otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is "payable to order" if it is payable to the order of an identified person or to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed as stated in 30-3-204(1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank as stated in 30-3-204(2)."

NEW SECTION. Section 97. Identification of person to whom instrument is payable. (1) A person to whom an instrument is payable is determined by the intent of the person, whether or not authorized, signing as, in the name of, or on behalf of the maker or drawer. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or on behalf of the maker or drawer and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(2) If the signature of the maker or drawer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to:

(i) a trust, estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar

representative of a named or identified person, the instrument is payable either to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(4) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

NEW SECTION. Section 98. Place of payment. Except as

otherwise provided for items in chapter 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place

of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

NEW SECTION. Section 99. Interest. (1) Unless otherwise provided in the instrument, an instrument is not payable with interest and interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money, or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

Section 100. Section 30-3-114, MCA, is amended to read:

"30-3-114. Date,--antedating,--postdating of instrument.

(1) ~~The negotiability of an~~ An instrument is not affected by the fact that it is undated, may be antedated or postdated.

~~(2)--Where an instrument is antedated or postdated--the~~

~~time when it is payable is determined by the stated~~ The date stated determines the time of payment if the instrument is payable on demand or at a fixed period after date. Except as provided in 30-4-401(3), an instrument payable on demand is not payable before the date of the instrument.

~~(3)(2) Where the instrument or any signature thereon is dated,--the date is presumed to be correct. If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder."~~

NEW SECTION. Section 101. Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

Section 102. Section 30-3-115, MCA, is amended to read:

"30-3-115. Incomplete instruments instrument. (1) ~~When a paper whose contents at the time of signing show--that--it is--intended--to--become an instrument is signed while still incomplete in any necessary respect it--cannot--be--enforced until completed,--but when it is completed in accordance with authority--given--it--is effective as completed:~~ "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to subsection (3), if an incomplete instrument is an instrument under 30-3-104, it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under 30-3-104 but, after completion, the requirements of 30-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

~~(3) If the completion is unauthorized the rules as to material alteration apply if words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument governed by 30-3-407, even though the paper was not delivered by the maker or drawer.~~

~~(4) but the~~ The burden of establishing that any ~~completion is unauthorized~~ words or numbers were added to an incomplete instrument without authority of the signer is on the ~~party so~~ person asserting the lack of authority."

NEW SECTION. Section 103. Joint and several liability

-- contribution. (1) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who are indorsing joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in [section 142(5)] or by agreement of the affected parties, a party with joint and several liability that pays the instrument is entitled to receive from any party with the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party with joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (2) of a party with the same joint and several liability to receive contribution from the party discharged.

Section 104. Section 30-3-119, MCA, is amended to read:

"30-3-119. Other writings agreements affecting instrument. ~~{1}~~ As between the obligor and his immediate obligee or any transferee the terms of an Subject to applicable law regarding exclusion of proof of contemporaneous or prior agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or affected nullified by any other written a separate agreement executed of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the

instrument giving rise to the agreement.

~~{2}--A--separate--agreement--does--not--affect--the negotiability-of-an-instrument-~~ To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation."

Section 105. Section 30-3-122, MCA, is amended to read:

"30-3-122. ~~Accrual--of--cause-of--action~~ Statute of limitations. (1) ~~A-cause-of-action-against-a-maker--or--an acceptor-accrues-~~

~~{a}--in--the--case-of-a-time-instrument-on-the-day-after maturity;~~

~~{b}--in-the-case-of-a-demand-instrument--upon--its--date or--if--no--date--is-stated--on-the-date-of-issue~~ Except as provided in subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the payment date or dates stated in the note or, if a payment date is accelerated, within 6 years after the accelerated payment date.

(2) Except as provided in subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an

action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 6 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 6 years after demand for payment is made to the acceptor or issuer, as the case may be.

~~{2}~~(5) A-cause-of An action against-the--obligor--of--a demand--or--time to enforce the obligation of a party to a certificate of deposit accrues-upon-demand--but-demand-on--a time--certificate-may-not-be-made-until--on-or-after-the-date of to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a maturity date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the maturity date has passed.

~~{3}--A-cause-of-action-against-a-drawer-of-a-draft-or-an endorser-of-any-instrument--accrues--upon--demand--following~~

dishonor-of-the-instrument;-Notice-of-dishonor-is-a-demand;

{4}--Unless--an--instrument-provides-otherwise;-interest runs-at-the-rate-provided-by-law-for-a-judgment;

{a}--in-the-case-of-a-maker;-acceptor-or--other--primary obligor-of-a-demand-instrument;-from-the-date-of-demand;

{b}--in--all-other-cases-from-the-date-of-accrual-of-the cause-of-action;

(6) This subsection applies to an action to enforce the obligation of a party to pay an accepted draft, other than a certified check. If the obligation of the acceptor is payable at a definite time, the action must be commenced within 6 years after the payment date or dates stated in the draft or acceptance. If the obligation of the acceptor is payable on demand, the action must be commenced within 6 years after the date of the acceptance.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or for like action based on conversion; for breach of warranty; or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within 3 years after the cause of action accrues."

NEW SECTION. Section 106. Notice of right to defend action. In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or

chapter 4, the defendant may give the third person written notice of the litigation and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Section 107. Section 30-3-202, MCA, is amended to read:

"30-3-202. **Negotiation.** (1) "Negotiation" is-the means a transfer of possession, whether voluntary or involuntary, of an instrument in--such--form--that-the-transferee to a person who thereby becomes a its holder if possession is obtained from a person other than the issuer of the instrument. If--the--instrument--is--payable-to-order-it-is negotiated-by-delivery-with-any--necessary--endorsement;--if payable-to-bearer-it-is-negotiated-by-delivery;

(2) An--endorsement--must-be-written-by-or-on-behalf-of the-holder-and-on-the-instrument-or-on--a-paper--so--firmly affixed--thereto--as--to--become--a-part-thereof; Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the

holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

~~{3}--An--endorsement--is--effective--for--negotiation--only--when--it--conveys--the--entire--instrument--or--any--unpaid--residue--if--it--purports--to--be--of--less--it--operates--only--as--a--partial--assignment--~~

~~{4}--Words--of--assignment, condition, waiver, guaranty, limitation--or--disclaimer--of--liability--and--the--like--accompanying--an--endorsement--do--not--affect--its--character--as--an--endorsement--~~

NEW SECTION. Section 108. Negotiation subject to rescission. (1) Negotiation is effective even if obtained:

(a) from an infant, a corporation exceeding its powers, or a person without capacity; or

(b) by fraud, duress, or mistake or in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

NEW SECTION. Section 109. Rights acquired by transfer.

(1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to

the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, regardless of whether the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee may not acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the purchaser engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

Section 110. Section 30-3-203, MCA, is amended to read:

"30-3-203. Wrong-or-misapplied-name Indorsement. (1) "Indorsement" means a signature, other than that of a maker, drawer, or acceptor, that alone or accompanied by other

words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, the terms of the instrument, the place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) Where If an instrument is made payable to a person holder under a misspelled name or one other than his own he may endorse in that name or his own that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name, or both, but signature in both names may be required by a person paying or giving value for taking the instrument for value or collection."

Section 111. Section 30-3-204, MCA, is amended to read:

"30-3-204. Special endorsement indorsement -- blank endorsement indorsement -- anomalous indorsement. (1) A special endorsement specifies the If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom or to whose order it makes the instrument payable, it is a "special indorsement". Any instrument When specially endorsed indorsed, an instrument becomes payable to the order of the special endorsee identified person and may be further negotiated only by his indorsement the indorsement of that person. The principles stated in [section 97] apply to special indorsements.

(2) An endorsement in If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement" specifies no particular endorsee and may consist of a mere signature. An instrument payable to order and endorsed When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by delivery transfer of possession alone until specially endorsed indorsed.

(3) The holder may convert a blank endorsement indorsement that consists only of a signature into a special endorsement indorsement by writing, over above the signature of the endorser indorser, in blank any contract consistent with the character of the endorsement words identifying the

1 person to whom the instrument is made payable.

2 (4) "Anomalous indorsement" means an indorsement made
 3 by a person that is not the holder of the instrument. An
 4 anomalous indorsement does not affect the manner in which
 5 the instrument may be negotiated."

6 **Section 112.** Section 30-3-205, MCA, is amended to read:

7 **"30-3-205. Restrictive endorsements indorsement. (1) An**
 8 **endorsement indorsement is restrictive which either:**

9 (a)--is--conditional; limiting payment to a particular
 10 person or

11 (b)--purports-to-prohibit otherwise prohibiting further
 12 transfer or negotiation of the instrument;--or is not
 13 effective to prevent further transfer or negotiation of the
 14 instrument.

15 (2) An indorsement stating a condition to the right of
 16 the indorsee to receive payment does not affect the right of
 17 the indorsee to enforce the instrument. A person paying the
 18 instrument or taking it for value or collection may
 19 disregard the condition, and the rights and liabilities of
 20 that person are not affected by whether the condition has
 21 been fulfilled.

22 (c)--includes (3) The following rules apply to an
 23 instrument bearing an indorsement, described in 30-4-201(2),
 24 or in blank or to a particular bank using the words "for
 25 collection", "for deposit", "pay-any-bank", or like--terms

1 signifying other words indicating a purpose of deposit-or
 2 collection having the instrument collected by a bank for the
 3 indorser or for a particular account;--or

4 (a) A person, other than a bank, that purchases the
 5 instrument when so indorsed converts the instrument unless
 6 the proceeds of the instrument are received by the indorser
 7 or are applied consistently with the indorsement.

8 (b) A depositary bank that purchases the instrument or
 9 takes it for collection when so indorsed converts the
 10 instrument unless the proceeds of the instrument are
 11 received by the indorser or applied consistently with the
 12 indorsement.

13 (c) A payor bank that is also the depositary bank or
 14 that takes the instrument for immediate payment over the
 15 counter from a person other than a collecting bank converts
 16 the instrument unless the proceeds of the instrument are
 17 received by the indorser or applied consistently with the
 18 indorsement.

19 (d) Except as otherwise provided in subsection (3)(c),
 20 a payor bank or intermediary bank may disregard the
 21 indorsement and is not liable if the proceeds of the
 22 instrument are not received by the indorser or applied
 23 consistently with the indorsement.

24 (d)(4) otherwise--states--that--it--is Except for an
 25 indorsement covered by subsection (3), the following rules

1 apply to an instrument bearing an indorsement using words to
 2 the effect that payment is to be made to the indorsee as
 3 agent, trustee, or other fiduciary for the benefit or use of
 4 the endorser indorser or of another person:

5 (a) Unless there is notice of breach of fiduciary duty
 6 as provided in [section 120], a person that purchases the
 7 instrument from the indorsee or takes the instrument from
 8 the indorsee for collection or payment may pay the proceeds
 9 of payment or the value given for the instrument to the
 10 indorsee without regard to whether the indorsee violates a
 11 fiduciary duty to the indorser.

12 (b) A later transferee of the instrument or person that
 13 pays the instrument is neither given notice nor otherwise
 14 affected by the restriction in the indorsement unless the
 15 transferee or payor knows that the fiduciary dealt with the
 16 instrument or its proceeds in breach of fiduciary duty.

17 (5) Purchase of an instrument bearing an indorsement to
 18 which this section applies does not prevent the purchaser
 19 from becoming a holder in due course of the instrument
 20 unless the purchaser is a converter under subsection (3).

21 (6) In an action to enforce the obligation of a party
 22 to pay the instrument, the obligor has a defense if payment
 23 would violate an indorsement to which this section applies
 24 and the payment is not permitted by this section."

25 **Section 113.** Section 30-3-208, MCA, is amended to read:

1 **"30-3-208. Reacquisition.** Where Reacquisition of an
 2 instrument is returned to or reacquired by a prior party--he
 3 occurs if it is transferred, by negotiation or otherwise, to
 4 a former holder. A former holder that reacquires the
 5 instrument may cancel any endorsement which is not necessary
 6 to---his---title---and---reissue---or---further---negotiate---the
 7 instrument, but---any---intervening---party indorsements made
 8 after the reacquirer first became a holder of the
 9 instrument. If the cancellation causes the instrument to be
 10 payable to the reacquirer or to bearer, the reacquirer may
 11 negotiate the instrument. An indorser whose indorsement is
 12 canceled is discharged, as and the discharge is effective
 13 against the reacquiring party and subsequent holders not---in
 14 due---course---and---if---his---endorsement---has been canceled is
 15 discharged as against subsequent holders in---due---course---as
 16 well any late holder."

17 **Section 114.** Section 30-3-301, MCA, is amended to read:

18 **"30-3-301. Rights---of---a---holder** Person entitled to
 19 enforce instrument. The "Person entitled to enforce" an
 20 instrument means the holder of an instrument, a nonholder in
 21 possession of the instrument who has the rights of a holder,
 22 or a person not in possession of the instrument who is
 23 entitled to enforce the instrument pursuant to [section
 24 122]. A person may be a person entitled to enforce the
 25 instrument whether or not he even though the person is not

1 the owner of the instrument ~~may transfer or negotiate it~~
 2 ~~and, except as otherwise provided in 30-3-603 on payment or~~
 3 ~~satisfaction, discharge it or enforce payment in his own~~
 4 ~~name or is in wrongful possession of the instrument."~~

5 **Section 115.** Section 30-3-302, MCA, is amended to read:

6 "30-3-302. Holder in due course. (1) A Subject to
 7 subsection (3) and 30-3-105(4), "holder in due course" is-a
 8 means the holder who takes the of an instrument if:

9 (a) the instrument when issued or negotiated to the
 10 holder does not bear such apparent evidence of forgery or
 11 alteration or is not otherwise so irregular or incomplete as
 12 to call into question its authenticity; and

13 (b) the holder took the instrument:

14 (i) for value; and

15 (b)(ii) in good faith; and

16 (c)(iii) without notice that it is overdue or has been
 17 dishonored or that there is an uncured default with respect
 18 to payment of another instrument issued as part of the same
 19 series;

20 (iv) without notice that the instrument contains an
 21 unauthorized signature or has been altered;

22 (v) without notice of any claim to the instrument
 23 stated in 30-3-306; and

24 (vi) without notice that any party to the instrument has
 25 of any defense against or claim to it on the part of any

1 person in recoupment stated in 30-3-305(1).

2 (2) A payee may be a holder in due course. Notice of
 3 discharge of a party to the instrument, other than discharge
 4 in an insolvency proceeding, is not notice of a defense
 5 under subsection (1), but discharge is effective against a
 6 person who became a holder in due course with notice of the
 7 discharge. Public filing or recording of a document does not
 8 of itself constitute notice of a defense, claim in
 9 recoupment, or claim to the instrument.

10 (3) A holder Except to the extent a transferor or
 11 predecessor in interest has rights as a holder in due
 12 course, a person does not become acquire rights of a holder
 13 in due course of an instrument taken:

14 (a) by legal process or by purchase of it at judicial
 15 at an execution, bankruptcy, or creditor's sale or by taking
 16 it under legal process similar proceeding; or

17 (b) by acquiring it in taking over an estate; or

18 (c) by purchasing it purchase as part of a bulk
 19 transaction not in regular ordinary course of business of
 20 the transferor; or

21 (c) as the successor in interest to an estate or other
 22 organization.

23 (4) If, under 30-3-303(1)(a), the promise of
 24 performance that is the consideration for an instrument has
 25 been partially performed, the holder may assert rights as a

holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(4)(5) A-purchaser-of-a-limited-interest-can-be If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to the--extent--of--the--interest--purchased an amount payable under the instrument that, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(6) To be effective, notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions."

Section 116. Section 30-3-303, MCA, is amended to read:

"30-3-303. Taking-for-value Value and consideration.

(1) A---holder---takes---the An instrument is issued or transferred for value if:

(a) the instrument is issued or transferred for a promise of performance, to the extent that the agreed consideration promise has been performed;

(b) or-that--he the transferee acquires a security interest in or a other lien on in the instrument otherwise other than a lien obtained by legal--process judicial proceedings; or

(b)(c) when-he-takes the instrument in is issued or transferred as payment of, or as security for, an antecedent claim--against an existing obligation of any person, whether or not the claim obligation is due; or

(d) the instrument is issued or transferred in exchange for a negotiable instrument; or

(c)(e) when-he-gives-a--negotiable the instrument is issued or transferred in exchange for it-or-makes-an the incurring of an irrevocable commitment obligation to a third person party by the person taking the instrument.

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the drawer or maker has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1), the instrument is also issued for

1 consideration."

2 **Section 117.** Section 30-3-304, MCA, is amended to read:

3 "30-3-304. Notice-to-purchaser Overdue instrument. (1)

4 The-purchaser-has-notice-of-a-claim-or-defense-if:

5 {a}--the-instrument-is-so-incomplete, bears-such-visible
6 evidence--of--forgery--or--alteration,--or--is--otherwise-so
7 irregular-as-to-call-into-question-its--validity,--terms--or
8 ownership--or-to-create-an-ambiguity-as-to-the-party-to-pay;
9 or

10 {b}--the-purchaser-has-notice-that-the-obligation-of-any
11 party-is-voidable-in-whole-or-in-part,--or-that--all--parties
12 have-been-discharged;

13 {2}--The--purchaser--has--notice--of-a-claim-against-the
14 instrument-when--he--has--knowledge--that--a--fiduciary--has
15 negotiated--the--instrument-in-payment-of-or-as-security-for
16 his-own-debt-or-in-any-transaction-for-his--own--benefit--or
17 otherwise-in-breach-of-duty;

18 {3}--The--purchaser--has--notice--that--an-instrument-is
19 overdue-if-he-has-reason-to-know;

20 {a}--that-any-part-of-the-principal-amount-is-overdue-or
21 that-there-is-an--uncured--default--in--payment--of--another
22 instrument-of-the-same-series;--or

23 {b}--that--acceleration-of-the-instrument-has-been-made;
24 or

25 {c}--that-he-is-taking-a-demand-instrument-after-demand

1 has-been-made-or-more-than-a-reasonable-length-of-time-after
2 its--issue;--A-reasonable-time-for-a-check-drawn-and-payable
3 within-the-states-and-territories-of-the-United--States--and
4 the-District-of-Columbia-is-presumed-to-be-30-days;

5 {4}--Knowledge-of-the-following-facts-does-not-of-itself
6 give-the-purchaser-notice-of-a-defense-or-claim;

7 {a}--that-the-instrument-is-antedated-or-postdated;

8 {b}--that--it--was-issued-or-negotiated-in-return-for-an
9 executory-promise-or-accompanied-by--a--separate--agreement;
10 unless--the-purchaser-has-notice-that-a-defense-or-claim-has
11 arisen-from-the-terms-thereof;

12 {c}--that-any-party-has-signed-for-accommodation;

13 {d}--that-an-incomplete-instrument-has--been--completed;
14 unless-the-purchaser-has-notice-of-any-improper-completion;

15 {e}--that--any--person--negotiating-the-instrument-is-or
16 was-a-fiduciary; An instrument payable on demand becomes
17 overdue at the earliest of the following times:

18 (a) on the day after the day demand for payment is duly
19 made;

20 (b) if the instrument is a check, 90 days after its
21 date; or

22 (c) if the instrument is not a check, when the
23 instrument has been outstanding for a period of time after
24 its date that is unreasonably long under the circumstances
25 of the particular case in light of the nature of the

instrument and trade usage.

(2) With respect to an instrument payable at a definite time, the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(f)(3) that Unless the due date of principal has been accelerated, an instrument does not become overdue if there has been is a default in payment of interest on the instrument or but no default in payment of any other instrument, except one of the same series principal.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity

to act on it."

Section 118. Section 30-3-305, MCA, is amended to read:

"30-3-305. Rights of a holder in due course Defenses and claims in recoupment. To the extent that a holder is a holder in due course he takes the instrument free from:

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except: (1) Except as stated in subsection (2), the right to enforce the obligation of a party to pay the instrument is subject to the following:

(a) A defense of the obligor based on:

(i) infancy, of the obligor to the extent that it is a defense to a simple contract; and

(b)(ii) such other incapacity, or duress, lack of legal capacity, or illegality of the transaction as renders that nullifies the obligation of the party a nullity obligor; and

(c)(iii) such misrepresentation as has fraud that induced the party obligor to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge learn of its character or its essential terms; and or

(d)(iv) discharge of the obligor in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument.

(b) A defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument. The claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a) but is not subject to defenses of the obligor stated in subsection (1)(b) or claims in recoupment stated in subsection (1)(c) against a person other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (30-3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay

the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, or lack of legal capacity."

Section 119. Section 30-3-306, MCA, is amended to read:

"30-3-306. Rights-of-one-not-holder-in-due-course Claims to an instrument. Unless he has the A person taking an instrument, other than a person having rights of a holder in due course, any person takes the instrument subject to:

(a)--all valid claims to it on the part of--any person;

and

(b)--all--defenses of any party which would be available in an action on a simple contract; and

(c)--the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (30-3-408); and

(d)--the defense that he or a person through whom he

~~holds--the--instrument--acquired--it--by--theft--or--that--payment
or--satisfaction--to--such--holder--would--be--inconsistent--with
the--terms--of--a--restrictive--endorsement--The--claim--of--any
third--person--to--the--instrument--is--not--otherwise--available--as
a--defense--to--any--party--liable--thereon--unless--the--third
person--himself--defends--the--action--for--such--party is subject
to a claim of a property or possessory right in the
instrument or its proceeds, including a claim to rescind a
negotiation and to recover the instrument or its proceeds. A
person having rights of a holder in due course takes free of
the claim to the instrument."~~

NEW SECTION. Section 120. Notice of breach of
fiduciary duty. (1) This section applies if an instrument is
taken from a fiduciary for payment or collection or for
value, the taker has knowledge of the fiduciary status of
the fiduciary, and the represented person makes a claim to
the instrument or its proceeds on the basis that the
transaction of the fiduciary is a breach of fiduciary duty.
Notice of breach of fiduciary duty by the fiduciary is
notice of the claim of the represented person. "Fiduciary"
means an agent, trustee, partner, corporation officer or
director, or other representative owing a fiduciary duty
with respect to the instrument. "Represented person" means
the principal, beneficiary, partnership, corporation, or
other person to whom the duty is owed.

(2) If the instrument is payable to the fiduciary, as
such, or to the represented person, the taker has notice of
the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known
by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for
the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of
the fiduciary, as such, or an account of the represented
person.

(3) If the instrument is made or drawn by the
fiduciary, as such, payable to the fiduciary personally, the
taker does not have notice of the breach of fiduciary duty
unless the taker knows of the breach of fiduciary duty.

(4) If the instrument is made or drawn by or on behalf
of the represented person to the taker as payee, the taker
has notice of the breach of fiduciary duty if the instrument
is:

(a) taken in payment of or as security for a debt known
by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for
the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of
the fiduciary, as such, or an account of the represented
person.

Section 121. Section 30-3-307, MCA, is amended to read:

"30-3-307. Burden--of-establishing Proof of signatures, defenses and status as holder in due course. (1) Unless specifically--denied--in--the--pleadings In an action with respect to an instrument, the authenticity of and authority to make each signature on an the instrument is admitted unless specifically denied in the pleadings. When--the effectiveness If the validity of a signature is put--in issue:

{a} denied in the pleadings, the burden of establishing it validity is on the party person claiming under--the signature, validity, but

{b} the signature is presumed to be genuine--or authentic and authorized except where unless the action is to enforce the obligation liability of a the purported signer who-has--died and the signer is dead or become incompetent before-proof-is-required at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person pursuant to 30-3-403{1}.

(2) When If the validity of signatures are is admitted or established,--production-of proved and there is compliance

with subsection (1), a plaintiff producing the instrument entitles-a-holder-to-recover-on-it is entitled to payment if the plaintiff proves entitlement to enforce the instrument under 30-3-301, unless the defendant establishes proves a defense or claim in recoupment.

{3}--After-it-is-shown-that-a-defense--exists--a--person claiming--the If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course has the-burden-of-establishing-that-he-or-some-person-under-whom he-claims-is-in-all-respects-a-holder-in-due-course that are not subject to the defense or claim."

NEW SECTION. Section 122. Enforcement of lost, destroyed, or stolen instrument. (1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) that person was in rightful possession of the instrument and entitled to enforce it when loss of possession occurred;

(b) the loss of possession was not the result of a voluntary transfer by that person or a lawful seizure; and

(c) that person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful

possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument pursuant to subsection (1) shall prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, 30-3-307 applies to the case as though the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

NEW SECTION. Section 123. Effect of instrument on obligation for which taken. (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same

extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken.

(3) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(4) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(5) If the check or note is dishonored and the obligee of the obligation for which the instrument was taken has possession of the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person that is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(6) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the

1 amount payable on the instrument, and to that extent, the
2 obligee's rights against the obligor are limited to
3 enforcement of the instrument.

4 (7) If an instrument other than one described in
5 subsection (1) or (2) is taken for an obligation, the effect
6 is:

7 (a) that stated in subsection (1) if the instrument is
8 one on which a bank is liable as maker or acceptor; or

9 (b) that stated in subsection (2) in any other case.

10 **NEW SECTION. Section 124.** Accord and satisfaction by
11 use of instrument. (1) This section applies if a person
12 against whom a claim is asserted proves that:

13 (a) that person in good faith tendered an instrument to
14 the claimant as full satisfaction of the claim;

15 (b) the amount of the claim was unliquidated or subject
16 to a bona fide dispute; and

17 (c) the claimant obtained payment of the instrument.

18 (2) Unless subsection (3) applies, the claim is
19 discharged if the person against whom the claim is asserted
20 proves that the instrument or an accompanying written
21 communication contained a conspicuous statement to the
22 effect that the instrument was tendered as full satisfaction
23 of the claim.

24 (3) Subject to subsection (4), a claim is not
25 discharged under subsection (2) if the claimant is an

1 organization and proves that within a reasonable time before
2 the tender, the claimant sent a conspicuous statement to the
3 person against whom the claim is asserted that
4 communications concerning disputed debts, including an
5 instrument tendered as full satisfaction of a debt, are to
6 be sent to a designated person, office, or place and the
7 instrument or accompanying communication was not received by
8 that designated person, office, or place.

9 (4) Notwithstanding subsection (3), a claim is
10 discharged under subsection (2) if the person against whom
11 the claim is asserted proves that within a reasonable time
12 before collection of the instrument was initiated, an agent
13 of the claimant having direct responsibility with respect to
14 the disputed obligation knew that the instrument was
15 tendered in full satisfaction of the claim or received the
16 instrument and any accompanying written communication.

17 **Section 125.** Section 30-3-401, MCA, is amended to read:

18 "30-3-401. Signature. (1) No A person is not liable on
19 an instrument unless:

20 (a) his signature appears thereon the person signed the
21 instrument; or

22 (b) the person is represented by an agent or
23 representative who signed the instrument and the signature
24 is binding on the represented person under 30-3-403.

25 (2) A signature is made:

1 (a) manually or by means of a device or machine; and

2 (b) by use of any name, including any trade or assumed
 3 name, upon an instrument, or by any word, or mark, or symbol
 4 used in lieu of a written signature executed or adopted by a
 5 person with present intention to authenticate a writing."

6 **Section 126.** Section 30-3-403, MCA, is amended to read:

7 "30-3-403. Signature by authorized representative. (1)

8 A signature may be made by an agent or other representative,
 9 and his authority to make it may be established as in other
 10 cases of representation. No particular form of appointment
 11 is necessary to establish such authority. If a person
 12 acting, or purporting to act, as a representative signs an
 13 instrument by signing either the name of the represented
 14 person or the name of the signer, the represented person is
 15 bound by the signature to the same extent the represented
 16 person would be bound if the signature were on a simple
 17 contract. If the represented person is bound, the signature
 18 of the representative is the "authorized signature of the
 19 represented person" and the represented person is liable on
 20 the instrument, whether or not identified in the instrument.

21 (2) An authorized If a representative who signs his own
 22 the name of the representative to an instrument and that
 23 signature is an authorized signature of the represented
 24 person, the following rules apply:

25 (a) is personally obligated if the instrument neither

1 names the person represented nor shows that the
 2 representative signed in a representative capacity; If the
 3 form of the signature shows unambiguously that the signature
 4 is made on behalf of the represented person who is
 5 identified in the instrument, the representative is not
 6 liable on the instrument.

7 (b) except as otherwise established between the
 8 immediate parties, is personally obligated if the instrument
 9 names the person represented but Subject to subsection (3),
 10 if the form of the signature does not show unambiguously
 11 that the representative signed signature is made in a
 12 representative capacity, or if the represented person is not
 13 identified in the instrument, does not name the person
 14 represented but does show the representative is liable on
 15 the instrument to a holder in due course that took the
 16 instrument without notice that the representative signed in
 17 a representative capacity was not intended to be liable on
 18 the instrument. With respect to any other person, the
 19 representative is liable on the instrument unless the
 20 representative proves that the original parties to the
 21 instrument did not intend the representative to be liable on
 22 the instrument.

23 (3) Except as otherwise established If a representative
 24 signs the name of an organization preceded or followed by
 25 the name and office of an authorized individual is a

signature---made---in---a---representative---capacity the representative as drawer of a check without indication of the representative's status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person."

Section 127. Section 30-3-404, MCA, is amended to read:

"30-3-404. Unauthorized signatures. (1) Any Unless otherwise provided in this chapter, an unauthorized signature is wholly-inoperative as-that-of-the-person-whose name-is-signed-unless-he-ratifies-it-or--is--precluded--from denying--it;--but--it--operates ineffective except as the signature of the unauthorized signer in favor of any a person who in good faith pays the instrument or takes it for value.

(2)--Any An unauthorized signature may be ratified for all purposes of this chapter. Such-ratification-does-not-of itself-affect-any-rights-of-the-person-ratifying-against-the actual-signer.

(2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is missing.

(3) The civil or criminal liability of a person who

makes an unauthorized signature is not affected by any provision of this chapter that makes the unauthorized signature effective for the purposes of this chapter."

Section 128. Section 30-3-405, MCA, is amended to read:

"30-3-405. Impostors -- signature--in--name--of--payee fictitious payees. (1) An-endorsement-by-any-person-in-the name-of-a-named-payee-is-effective-if:

(a) If an impostor by use of the mails or otherwise has induced induces the maker or drawer of an instrument to issue the instrument to him-or-his-confederate the impostor or to a person acting in concert with the impostor by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection;--or

(b)--a-person--signing--as--or--on-behalf-of-a-maker-or drawer--intends--the--payee--to--have--no--interest--in--the instrument;--or

(c)--an-agent-or-employee-of-the--maker--or--drawer--has supplied-him-with-the-name-of-the-payee-intending-the-latter to-have-no-such-interest.

(2) Nothing--in--this-section-shall-affect-the-criminal or-civil-liability-of-the-person-so-endorsing. If a person

1 whose intent determines to whom an instrument is payable
 2 {[section 97(1) or (2)]} does not intend the person
 3 identified as payee to have any interest in the instrument
 4 or if the person identified as payee of an instrument is a
 5 fictitious person, the following rules apply until the
 6 instrument is negotiated by special indorsement:

7 (a) Any person in possession of the instrument is its
 8 holder.

9 (b) An indorsement by any person in the name of the
 10 payee stated in the instrument is effective as the
 11 indorsement of the payee in favor of any person who in good
 12 faith pays the instrument or takes it for value or for
 13 collection.

14 (3) Under subsection (1) or (2), an indorsement is made
 15 in the name of a payee if:

16 (a) it is made in a name substantially similar to that
 17 of the payee; or

18 (b) the instrument, whether or not indorsed, is
 19 deposited in a depository bank to an account in a name
 20 substantially similar to that of the payee.

21 (4) With respect to an instrument to which subsection
 22 (1) or (2) applies, if a person paying the instrument or
 23 taking it for value or for collection fails to exercise
 24 ordinary care in paying or taking the instrument and that
 25 failure substantially contributes to loss resulting from

1 payment of the instrument, the person bearing the loss may
 2 recover from the person failing to exercise ordinary care to
 3 the extent the failure to exercise ordinary care contributed
 4 to the loss."

5 NEW SECTION. Section 129. Employer responsibility for
 6 fraudulent indorsement by employee. (1) This section applies
 7 to fraudulent indorsements of instruments with respect to
 8 which an employer has entrusted an employee with
 9 responsibility as part of the employee's duties. The
 10 following definitions apply to this section:

11 (a) "Employee" includes, in addition to an employee of
 12 an employer, an independent contractor and employee of an
 13 independent contractor retained by the employer.

14 (b) "Fraudulent indorsement" means:

15 (i) in the case of an instrument payable to the
 16 employer, a forged indorsement purporting to be that of the
 17 employer; or

18 (ii) in the case of an instrument with respect to which
 19 the employer is drawer or maker, a forged indorsement
 20 purporting to be that of the person identified as payee.

21 (c) (i) "Responsibility" with respect to instruments
 22 means authority to:

23 (A) sign or indorse instruments on behalf of the
 24 employer;

25 (B) process instruments received by the employer for

1 bookkeeping purposes, for deposit to an account, or for
2 other disposition;

3 (C) prepare or process instruments for issue in the
4 name of the employer;

5 (D) supply information determining the names or
6 addresses of payees of instruments to be issued in the name
7 of the employer;

8 (E) control the disposition of instruments to be issued
9 in the name of the employer; or

10 (F) otherwise act with respect to instruments in a
11 responsible capacity.

12 (ii) The term does not include the assignment of duties
13 that merely allows an employee to have access to instruments
14 or blank or incomplete instrument forms that are being
15 stored or transported or are part of incoming or outgoing
16 mail, or similar access.

17 (2) For purposes of determining the rights and
18 liabilities of a person who in good faith pays an instrument
19 or takes it for value or for collection, if an employee
20 entrusted with responsibility with respect to the instrument
21 or a person acting in concert with the employee makes a
22 fraudulent indorsement to the instrument, the indorsement is
23 effective as the indorsement of the person to whom the
24 instrument is payable if it is made in the name of that
25 person. If the person paying the instrument or taking it for

1 value or for collection fails to exercise ordinary care in
2 paying or taking the instrument and that failure
3 substantially contributes to loss resulting from the fraud,
4 the person bearing the loss may recover from the person
5 failing to exercise ordinary care to the extent the failure
6 to exercise ordinary care contributed to the loss.

7 (3) Under subsection (2), an indorsement is made in the
8 name of the person to whom an instrument is payable if:

9 (a) it is made in a name substantially similar to the
10 name of that person; or

11 (b) the instrument, whether or not indorsed, is
12 deposited in a depository bank to an account in a name
13 substantially similar to the name of that person.

14 **Section 130.** Section 30-3-406, MCA, is amended to read:

15 "30-3-406. Negligence contributing to alteration forged
16 signature or unauthorized---signature alteration of
17 instrument. (1) Any A person who-by-his-negligence whose
18 failure to exercise ordinary care substantially contributes
19 to a--material an alteration of the an instrument or to the
20 making of an--unauthorized a forged signature on an
21 instrument is precluded from asserting the alteration or
22 lack-of-authority the forgery against a holder-in-due-course
23 or-against-a-drawee-or-other-payor-who a person who in good
24 faith pays the instrument in-good-faith-and-in-accordance
25 with-the-reasonable-commercial-standards-of-the-drawee's--or

1 payor's business or takes it for value.

2 (2) If the person asserting the preclusion fails to
 3 exercise ordinary care in paying or taking the instrument
 4 and that failure substantially contributes to loss, the loss
 5 is allocated between the person precluded and the person
 6 asserting the preclusion according to the extent to which
 7 the failure of each to exercise ordinary care contributed to
 8 the loss.

9 (3) Under subsection (1), the burden of proving failure
 10 to exercise ordinary care is on the person asserting the
 11 preclusion. Under subsection (2), the burden of proving
 12 failure to exercise ordinary care is on the person
 13 precluded."

14 **Section 131.** Section 30-3-407, MCA, is amended to read:

15 **"30-3-407. Alteration. (1) Any----alteration----of**
 16 **"Alteration" means:**

17 (a) an unauthorized change in an instrument is material
 18 which--changes--the--contract--of--any--party--thereto that
 19 purports to modify in any respect,--including--any--such--change
 20 in;

21 (a)--the---number---or---relations---of---the---parties the
 22 obligation of a party to the instrument; or

23 (b) an unauthorized addition of words or numbers or
 24 other change to an incomplete instrument,--by-completing-it
 25 otherwise--than--as--authorized;--or

1 (c)--the-writing-as--signed,--by--adding--to--it--or--by
 2 removing--any--part--of-it relating to the obligation of any
 3 party to the instrument.

4 (2) As-against--any--person--other--than--a--subsequent
 5 holder-in-due-course;

6 (a)--alteration--by--the-holder-which-is-both-fraudulent
 7 and-material: Except as provided in subsection (3), an
 8 alteration fraudulently made discharges any party whose
 9 contract-is--thereby--changed obligation is affected by the
 10 alteration unless that party assents or is precluded from
 11 asserting the defense;

12 (b)--no alteration. No other alteration discharges any
 13 party, and the instrument may be enforced according to its
 14 original tenor,--or--as--to--incomplete-instruments--according--to
 15 the-authority-given terms.

16 (3) A subsequent-holder-in-due-course-may-in-all--cases
 17 person paying a fraudulently altered instrument or taking it
 18 for value in good faith and without notice of the alteration
 19 may enforce rights with respect to the instrument;

20 (a) according to its original tenor,--and--when terms; or

21 (b) in the case of an incomplete instrument has-been
 22 completed,--he--may--enforce--it altered by unauthorized
 23 completion, according to its terms as completed."

24 **Section 132.** Section 30-3-409, MCA, is amended to read:

25 **"30-3-409. Draft-not-an-assignment Drawee not liable on**

1 unaccepted draft. {1} A check or other draft does not of
 2 itself operate as an assignment of any funds in the hands of
 3 the drawee available for its payment, and the drawee is not
 4 liable on the instrument until he the drawee accepts it.

5 ~~{2}--Nothing--in--this--section--shall--affect--any--liability~~
 6 ~~in--contract--tort--or--otherwise--arising--from--any--letter--of~~
 7 ~~credit--or--other--obligation--or--representation--which--is--not--an~~
 8 ~~acceptance."~~

9 **Section 133.** Section 30-3-410, MCA, is amended to read:

10 ~~"30-3-410. Definition---and---operation---of---acceptance~~
 11 Acceptance of draft -- certified check. (1) "Acceptance" is
 12 means the drawee's signed engagement-to-honor-the agreement
 13 to pay a draft as presented. It must be written on the
 14 draft, and may consist of ~~his~~ the drawee's signature alone.
 15 ~~It~~ Acceptance may be made at any time and becomes operative
 16 effective when ~~completed--by--delivery--or~~ notification
 17 pursuant to instructions is given or the accepted draft is
 18 delivered for the purpose of giving rights on the acceptance
 19 to any person.

20 (2) A draft may be accepted although it has not been
 21 signed by the drawer, or is otherwise incomplete, or is
 22 overdue, or has been dishonored.

23 (3) ~~Where--the~~ If a draft is payable at a fixed period
 24 after sight and the acceptor fails to date ~~his~~ the
 25 acceptance, the holder may complete ~~it~~ the acceptance by

1 supplying a date in good faith.

2 (4) "Certified check" means a check accepted by the
 3 bank on which it is drawn. Acceptance may be made as stated
 4 in subsection (1) or by a writing on the check that
 5 indicates that the check is certified. The drawee of a check
 6 has no obligation to certify the check, and refusal to
 7 certify is not dishonor of the check."

8 **Section 134.** Section 30-3-412, MCA, is amended to read:

9 ~~"30-3-412. Acceptance varying draft. (1) Where--the~~ If
 10 the terms of a drawee's proffered acceptance in-any-manner
 11 varies vary from the terms of the draft as presented, the
 12 holder may refuse the acceptance and treat the draft as
 13 dishonored. ~~in-which~~ In that case, the drawee ~~is-entitled-to~~
 14 ~~have-his~~ may cancel the acceptance canceled.

15 (2) The terms of the draft are not varied by an
 16 acceptance to pay at any a particular bank or place in the
 17 United States, unless the acceptance states that the draft
 18 is to be paid only at ~~such~~ that bank or place.

19 (3) ~~Where~~ If the holder assents to an acceptance
 20 varying the terms of ~~the a~~ draft, the obligation of each
 21 drawer and endorser indorser ~~who~~ that does not affirmatively
 22 expressly assent to the acceptance is discharged."

23 **NEW SECTION. Section 135.** Refusal to pay cashier's
 24 checks, teller's checks, and certified checks. (1) In this
 25 section, "obligated bank" means the acceptor of a certified

check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because:

(a) the bank suspends payments;

(b) the obligated bank is asserting a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;

(c) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or

(d) payment is prohibited by law.

Section 136. Section 30-3-413, MCA, is amended to read:

"30-3-413. Contract Obligation of maker,--drawer-and

~~acceptor. {1}-The A maker or-acceptor-engages-that--he--will of a note is obliged to pay the instrument note:~~

~~(1) according to its tenor terms at the time of-his engagement it was issued or, if not issued, at the time it first came into possession of a holder; or~~

~~(2) if the maker signed an incomplete instrument, according to its terms as when completed pursuant-to as stated in 30-3-115 on-incomplete-instruments and 30-3-407.~~

~~(3) The obligation is owed to a person entitled to enforce the note or to an indorser that paid the note pursuant to 30-3-414.~~

~~{2}--The-drawer-engages-that-upon-dishonor-of-the--draft and--any-necessary-notice-of-dishonor-or-protest-he-will-pay the-amount-of-the-draft-to-the-holder-or-to-any-endorser-who takes-it-up--The--drawer--may--disclaim--this--liability--by drawing-without-recourse-~~

~~{3}--By-making,-drawing-or-accepting-the-party-admits-as against--all--subsequent--parties--including--the-drawee-the existence-of-the-payee-and-his-then-capacity-to-endorse-"~~

NEW SECTION. Section 137. Obligation of acceptor. (1)

An acceptor of a draft is obliged to pay the draft:

(a) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;

(b) if the acceptance varies the terms of the draft,

1 according to the terms of the draft as varied; or

2 (c) if the acceptance is of a draft that is an
3 incomplete instrument, according to its terms when completed
4 as stated in 30-3-115 and 30-3-407.

5 (2) The obligation is owed to a person entitled to
6 enforce the draft or to the drawer or an indorser that paid
7 the draft pursuant to [section 138] or 30-3-414.

8 (3) If the certification of a check or other acceptance
9 of a draft states the amount certified or accepted, the
10 obligation of the acceptor is that amount. The obligation of
11 the acceptor is the amount of the instrument at the time it
12 was negotiated to the holder in due course if:

13 (a) the certification or acceptance does not state an
14 amount;

15 (b) the instrument is subsequently altered by raising
16 its amount; and

17 (c) the instrument is then negotiated to a holder in
18 due course.

19 **NEW SECTION. Section 138. Obligation of drawer.** (1) If
20 an unaccepted draft is dishonored, the drawer is obliged to
21 pay the draft:

22 (a) according to its terms at the time it was issued
23 or, if not issued, at the time it first came into possession
24 of a holder; or

25 (b) if the drawer signed an incomplete instrument,

1 according to its terms when completed as stated in 30-3-115
2 and 30-3-407.

3 (2) The obligation is owed to a person entitled to
4 enforce the draft or to an indorser that paid the draft
5 pursuant to 30-3-414.

6 (3) If a draft is accepted by a bank and the acceptor
7 dishonors the draft, the drawer has no obligation to pay the
8 draft because of the dishonor, regardless of when or by whom
9 acceptance was obtained.

10 (4) If a draft is accepted and the acceptor is not a
11 bank, the obligation of the drawer to pay the draft if the
12 draft is dishonored by the acceptor is the same as the
13 obligation of an indorser stated in 30-3-414(1) and (3).

14 (5) Words in a draft indicating that the draft is drawn
15 without recourse are effective to disclaim all liability of
16 the drawer to pay the draft if the draft is not a check, but
17 they are not effective to disclaim the obligation stated in
18 subsection (1) if the draft is a check.

19 (6) The drawer to the extent deprived of funds may
20 discharge its obligation to pay the check by assigning to
21 the person entitled to enforce the check the rights of the
22 drawer against the drawee with respect to the funds if:

23 (a) a check is not presented for payment or given to a
24 depository bank for collection within 30 days after its
25 date;

(b) the drawee suspends payments after expiration of the 30-day period without paying the check; and

(c) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check.

Section 139. Section 30-3-414, MCA, is amended to read:

"30-3-414. Contract Obligation of endorser ---order--of liability indorser. (1) Subject to subsections (2) through (4) and to 30-3-415(4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed or if the indorser indorsed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser that paid the instrument pursuant to this section.

(2) Unless-the-endorsement-otherwise--specifies--(as--by such--words--as If an indorsement states that it is made "without recourse")--every--endorser--engages---that---upon dishonor-and-any-necessary-notice-of-dishonor-and-protest-he will--pay--the-instrument-according-to-its-tenor-at-the-time of-his-endorsement--to--the--holder--or--to--any--subsequent endorser-who-takes-it-up--even-though-the-endorser-who-takes it--up--was--not--obligated--to-do-so or otherwise disclaims

liability of the indorser, the indorser is not liable under subsection (1) to pay the instrument.

(2)--Unless-they-otherwise-agree-endorers-are-liable-to one--another--in--the--order-in-which-they-endorse--which-is presumed-to-be-the-order-in-which-their-signatures-appear-on the-instrument--

(3) If notice of dishonor of an instrument is required by 30-3-508 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made and the acceptor dishonors the draft, the indorser is not liable under subsection (1) to pay the instrument.

(5) If an indorser of a check is liable under subsection (1) and the check is not presented for payment or given to a depository bank for collection within 30 days after the day the indorsement was made, the liability of the indorser under subsection (1) is discharged."

Section 140. Section 30-3-415, MCA, is amended to read:

"30-3-415. Contract---of Instruments signed for accommodation party. (1) An If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another part to the instrument ("accommodation party") is-one-who signs the instrument in

any--capacity for the purpose of lending his name to another party to it incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. When the instrument has been taken for value before it is due the obligation of an accommodation party is--liable--in the capacity in which he has signed even though the taker knows of may be enforced notwithstanding any statute of frauds and regardless of whether the accommodation party receives consideration for the accommodation.

(3) As--against--a--holder--in--due--course--and--without notice--of--the--accommodation--oral--proof--of--the--accommodation is--not--admissible--to--give--the--accommodation--party--the benefit--of--discharges--dependent--on--his--character--as--such--in other cases the accommodation character may be shown by oral proof: A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the

obligation of another party to the instrument. Except as provided in [section 154], the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) An--endorsement--which--shows--that--it--is--not--in--the chain--of--title--is--notice--of--its--accommodation--character-- If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(a) execution of judgment against the other party has been returned unsatisfied;

(b) the other party is insolvent or in an insolvency proceeding;

(c) the other party cannot be served with process; or

(d) it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

(5) An accommodation party is--not--liable--to--the--party accommodated--and--if--he that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An

1 accommodated party that pays the instrument has a no right
2 of recourse on the instrument against, and is not entitled
3 to contribution from, such an accommodation party."

4 **Section 141.** Section 30-3-417, MCA, is amended to read:

5 "30-3-417. Warranties--on--presentment---and---transfer
6 Transfer warranties. (1) Any person who obtains payment or
7 acceptance and any prior transferor warrants to a person who
8 in good faith pays or accepts that:

9 {a}--he has--a--good--title--to--the--instrument--or--is
10 authorized--to obtain payment or acceptance on behalf of one
11 who has a good title; and

12 {b}--he has no knowledge that the signature of the maker
13 or drawer is unauthorized; except that this warranty is not
14 given by a holder in due course acting in good faith;

15 {i}--to--a--maker--with--respect--to--the--maker's--own
16 signature; or

17 {ii}--to a drawer--with--respect--to--the--drawer's--own
18 signature; whether or not the drawer is also the drawee; or

19 {iii}--to an acceptor of a draft if the holder in due
20 course took the draft after the acceptance or obtained the
21 acceptance without knowledge that the drawer's signature was
22 unauthorized; and

23 {c}--the--instrument--has--not--been--materially--altered;
24 except that this warranty is not given by a holder in due
25 course acting in good faith;

1 {i}--to the maker of a note; or

2 {ii}--to the drawer of a draft whether or not the drawer
3 is also the drawee; or

4 {iii}--to the acceptor of a draft--with--respect--to--an
5 alteration made prior to the acceptance if the holder in due
6 course took the draft after the acceptance; even though the
7 acceptance provided--"payable--as--originally--drawn"---or
8 equivalent terms; or

9 {iv}--to the acceptor of a draft--with respect to an
10 alteration made after the acceptance;

11 {2}--Any A person who transfers an instrument and
12 receives for consideration warrants to his the transferee
13 and, if the transfer is by endorsement indorsement, to any
14 subsequent holder who takes the instrument in good faith
15 transferee that:

16 (a) he has a good title to the warrantor is a person
17 entitled to enforce the instrument or is authorized to
18 obtain payment or acceptance on behalf of one who has a good
19 title and the transfer is otherwise rightful; and

20 (b) all signatures on the instrument are genuine or
21 authentic and authorized; and

22 (c) the instrument has not been materially altered; and

23 (d) no the instrument is not subject to a defense or
24 claim in recoupment {30-3-305(1)} of any party is good
25 against him that can be asserted against the warrantor; and

(e) he the warrantor has no knowledge of any insolvency proceeding instituted commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer of an unaccepted instrument.

~~{3}--By--transferring--"without-recourse"--the transferor limits the obligation--stated--in--subsection--{2}{d}--to--a warranty that he has no knowledge of such a defense.~~

~~{4}--A selling agent or broker who does not disclose the fact--that--he--is--acting--only--as--such--gives--the--warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.~~

{2} A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

{3} The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

{4} A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach."

NEW SECTION. Section 142. Presentment warranties. (1)

If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making the payment or accepting the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise

1 ordinary care in making payment. If the drawee accepts the
2 draft, breach of warranty is a defense to the obligation of
3 the acceptor, and if the acceptor makes payment with respect
4 to the draft, the acceptor is entitled to recover from any
5 warrantor for breach of warranty the amounts stated in this
6 subsection.

7 (3) If a drawee asserts a claim for breach of warranty
8 under subsection (1) based on an unauthorized indorsement of
9 the draft or an alteration of the draft, the warrantor may
10 defend by proving that the indorsement is effective under
11 30-3-405 or [section 129] or the drawer is precluded under
12 30-3-406 or 30-4-406 from asserting against the drawee the
13 unauthorized indorsement or alteration.

14 (4) This subsection applies if a dishonored draft is
15 presented for payment to the drawer or an indorser or any
16 other instrument is presented for payment to a party obliged
17 to pay the instrument and payment is received. The person
18 obtaining payment and a prior transferor of the instrument
19 warrant to the person making payment in good faith that the
20 warrantor is or was, at the time the warrantor transferred
21 the instrument, a person entitled to enforce the instrument
22 or authorized to obtain payment on behalf of a person
23 entitled to enforce the instrument. The person making
24 payment may recover from any warrantor for breach of
25 warranty an amount equal to the amount paid plus expenses

1 and loss of interest resulting from the breach.

2 (5) The warranties stated in subsections (1) and (4)
3 cannot be disclaimed with respect to checks. Unless notice
4 of a claim for breach of warranty is given to the warrantor
5 within 30 days after the claimant has reason to know of the
6 breach and the identity of the warrantor, the warrantor is
7 discharged to the extent of any loss caused by the delay in
8 giving notice of the claim.

9 (6) A cause of action for breach of warranty under this
10 section accrues when the claimant has reason to know of the
11 breach.

12 NEW SECTION. Section 143. Payment or acceptance by
13 mistake. (1) Except as provided in subsection (3), if the
14 drawee of a draft pays or accepts the draft and the drawee
15 acted on the mistaken belief that payment of the draft had
16 not been stopped under 30-4-403, the signature of the
17 purported drawer of the draft was authorized, or the balance
18 in the drawer's account with the drawee represented
19 available funds, the drawee may recover the amount paid for
20 the person to whom or for whose benefit payment was made or,
21 in the case of acceptance, may revoke the acceptance. Rights
22 of the drawee under this subsection are not affected by
23 failure of the drawee to exercise ordinary care in paying or
24 accepting the draft.

25 (2) Except as provided in subsection (3), if an

1 instrument has been paid or accepted by mistake and the case
2 is not covered by subsection (1), the person paying or
3 accepting may recover the amount paid or revoke acceptance
4 to the extent allowed by the law governing mistake and
5 restitution.

6 (3) The remedies provided by subsection (1) or (2) may
7 not be asserted against a person who took the instrument in
8 good faith and for value. This subsection does not limit
9 remedies provided by [section 142] for breach of warranty.

10 **Section 144.** Section 30-3-419, MCA, is amended to read:

11 "30-3-419. Conversion of instrument -----innocent
12 representative. (1) The law applicable to conversion of
13 personal property applies to instruments. An instrument is
14 also converted when:

15 (a) --a if the instrument lacks an indorsement necessary
16 for negotiation and it is purchased or taken for collection
17 or the drawee to whom it is delivered for acceptance refuses
18 to return it on demand; or

19 (b) --any person to whom it is delivered for takes the
20 instrument and makes payment refuses on demand either to pay
21 or to return it; or

22 (c) --it is paid on a forged endorsement to a person not
23 entitled to receive payment. An action for conversion of an
24 instrument may not be brought by:

25 (a) the maker, drawer, or acceptor of an instrument; or

1 (b) a payee or indorsee who did not receive delivery of
2 the instrument either directly or through delivery to an
3 agent or copayee.

4 (2) In an action against a drawee under subsection (1),
5 the measure of the drawee's liability is presumed to be the
6 face amount of payable on the instrument, but recovery may
7 not exceed the amount of the plaintiff's interest in the
8 instrument. In any other action under subsection (1) the
9 measure of liability is presumed to be the face amount of
10 the instrument.

11 (3) Subject to the provisions of this code concerning
12 restrictive endorsements a A representative, including other
13 than a depository or collecting bank, who that has in good
14 faith and in accordance with the reasonable commercial
15 standards applicable to the business of such representative
16 dealt with an instrument or its proceeds on behalf of one
17 who was not the true owner person entitled to enforce the
18 instrument is not liable in conversion or otherwise to the
19 true owner to that person beyond the amount of any proceeds
20 remaining in his hands that it has not paid out.

21 (4) An intermediary bank or payor bank which is not a
22 depository bank is not liable in conversion solely by reason
23 of the fact that proceeds of an item endorsed restrictively
24 (30-3-205 and 30-3-206) are not paid or applied consistently
25 with the restrictive endorsement of an endorser other than

1 ~~its-immediate-transferor-"~~

2 **Section 145.** Section 30-3-504, MCA, is amended to read:

3 "~~30-3-504. How--presentment---made~~ Presentment. (1)

4 "Presentment" is means a demand:

5 (a) for-acceptance-or-payment to pay an instrument made
6 upon to the maker, acceptor, drawee, or other-payor by-or-on
7 behalf-of-the-holder acceptor or, in the case of a note of
8 accepted draft payable at a bank, to the bank; or

9 (b) to accept a draft made to the drawee by a person
10 entitled to enforce the instrument.

11 (2) Subject to chapter 4, agreement of the parties,
12 clearing house rules and the like Presentment-may-be-made:

13 (a) presentment may be made by-mail;-in-which-event-the
14 time--of-presentment-is-determined-by-the-time-of-receipt-of
15 the-mail;-or

16 (b)--through-a-clearinghouse;-or

17 (c)--at the place of acceptance-or payment specified--in
18 of the instrument or--if--there--be--none-at-the-place-of
19 business-or-residence-of-the-party--to--accept--or--pay--if
20 neither--the-party-to-accept-or-pay-nor-anyone-authorized-to
21 act--for--him--is--present-or-accessible--at--such---place
22 presentment-is-excused;

23 (3)--It and must be made at the place of payment if the
24 instrument is payable at a bank in the United States; may be
25 made by any commercially reasonable means, including an

1 oral, written, or electronic communication; is effective
2 when the demand for payment or acceptance is received by the
3 person to whom presentment is made; is effective if made

4 (a)--to any one of two or more makers, acceptors,
5 drawees, or other payors; or and

6 (b) to--any--person-who-has-authority-to-make-or-refuse
7 the--acceptance---or---payment without dishonoring the
8 instrument, the party to whom presentment is made may:

9 (i) treat presentment as occurring on the next business
10 day after the day of presentment if the party to whom
11 presentment is made has established a cutoff hour not
12 earlier than 2 p.m. for the receipt and processing of
13 instruments presented for payment or acceptance and
14 presentment is made after the cutoff hour;

15 (ii) require exhibition of the instrument;

16 (iii) require reasonable identification of the person
17 making presentment and evidence of authority to make it if
18 made on behalf of another person;

19 (iv) require a signed receipt on the instrument for any
20 payment made or surrender of the instrument if full payment
21 is made;

22 (v) return the instrument for lack of a necessary
23 indorsement; or

24 (vi) refuse payment or acceptance for failure of the
25 presentment to comply with the terms of the instrument, an

1 agreement of the parties, or other law or applicable rule.

2 ~~{4}--A-draft-accepted-or-a-note-made-payable-at--a--bank~~
3 ~~in-the-United-States-must-be-presented-at-such-bank-~~

4 ~~{5}--In--the-cases-described-in-30-4-218-presentment-may~~
5 ~~be-made-in-the-manner-and-with-the--result--stated--in--that~~
6 ~~section-~~"

7 NEW SECTION. Section 146. Dishonor. (1) Dishonor of a
8 note is governed by the following rules:

9 (a) If the note is payable on demand, the note is
10 dishonored if presentment is duly made and the note is not
11 paid on the day of presentment.

12 (b) If the note is not payable on demand and is payable
13 at or through a bank or the terms of the note require
14 presentment, the note is dishonored if presentment is duly
15 made and the note is not paid on the day it becomes payable
16 or the day of presentment, whichever is later.

17 (c) If the note is not payable on demand and subsection
18 (1)(b) does not apply, the note is dishonored if it is not
19 paid on the day it becomes payable.

20 (2) Dishonor of an unaccepted draft other than a
21 documentary draft is governed by the following rules:

22 (a) If a check is presented for payment otherwise than
23 for immediate payment over the counter, the check is
24 dishonored if the payor bank makes timely return of the
25 check or sends timely notice of dishonor or nonpayment under

1 30-4-301 or 30-4-302 or becomes accountable for the amount
2 of the check under 30-4-302.

3 (b) If the draft is payable on demand and subsection
4 (2)(a) does not apply, the draft is dishonored if
5 presentment for payment is duly made and the draft is not
6 paid on the day of presentment.

7 (c) If the draft is payable on a date stated in the
8 draft, the draft is dishonored if:

9 (i) presentment for payment is duly made and payment is
10 not made on the day the draft becomes payable or the day of
11 presentment, whichever is later; or

12 (ii) presentment for acceptance is duly made before the
13 day the draft becomes payable and the draft is not accepted
14 on the day of presentment.

15 (d) If the draft is payable on elapse of a period of
16 time after sight or acceptance, the draft is dishonored if
17 presentment for acceptance is duly made and the draft is not
18 accepted on the day of presentment.

19 (3) Dishonor of an unaccepted documentary draft occurs
20 according to the rules stated in subsections (2)(b) through
21 (2)(d) except that payment or acceptance may be delayed
22 without dishonor until no later than the close of the third
23 business day of the drawee following the day on which
24 payment or acceptance is required by those subsections.

25 (4) Dishonor of an accepted draft is governed by the

following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under [section 148], dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Section 147. Section 30-3-508, MCA, is amended to read:

"30-3-508. Notice of dishonor. (1) The obligation of an indorser stated in 30-3-414(1) and the obligation of a drawer stated in [section 138(3)] may not be enforced unless:

(a) the indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(b) notice of dishonor is excused under [section

148(3)].

(2) Notice of dishonor may be given to any person; who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument; in addition--an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is a sufficient notice of dishonor.

(3) Any necessary Subject to [section 148(4)], with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by a bank before its midnight deadline of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument and by any other person before midnight of the third business day after dishonor or receipt of within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

{3}--Notice--may--be--given--in--any--reasonable--manner--it
may--be--oral--or--written--and--in--any--terms--which--identify--the
instrument---and---state---that---it---has---been---dishonored---A
misdescription--which--does--not--mislead--the--party--notified
does--not--vitiate--the--notice--Sending--the--instrument--bearing
a--stamp--ticket--or--writing--stating--that--acceptance--or
payment--has--been--refused--or--sending--a--notice--of--debit--with
respect--to--the--instrument--is--sufficient--

{4}--Written--notice--is--given--when--sent--although--it--is
not--received--

{5}--Notice--to--one--partner--is--notice--to--each--although
the--firm--has--been--dissolved--

{6}--When--any--party--is--in---insolvency---proceedings
instituted--after--the--issue--of--the--instrument--notice--may--be
given--either--to--the--party--or--to--the--representative--of--his
estate--

{7}--When--any--party--is--dead--or--incompetent--notice--may--be
sent--to--his--last--known--address--or--given--to--his--personal
representative--

{8}--Notice--operates--for--the--benefit--of--all--parties--who
have--rights--on--the--instrument--against--the--party--notified--"

NEW SECTION. Section 148. Excused presentment and
notice of dishonor. (1) Presentment for payment or
acceptance of an instrument is excused if:

(a) the person entitled to present the instrument

cannot with reasonable diligence make presentment;

(b) the maker or acceptor has repudiated an obligation
to pay the instrument or is dead or in insolvency
proceedings;

(c) by the terms of the instrument, presentment is not
necessary to enforce the obligation of indorsers or the
drawer; or

(d) the drawer or indorser whose obligation is being
enforced waived presentment or otherwise has no reason to
expect or right to require that the instrument be paid or
accepted.

(2) Presentment for payment or acceptance of a draft is
also excused if the drawer instructed the drawee not to pay
or accept the draft or the drawee was not obligated to the
drawer to pay the draft.

(3) Notice of dishonor is excused if by the terms of
the instrument, notice of dishonor is not necessary to
enforce the obligation of a party to pay the instrument or
the party whose obligation is being enforced waived notice
of dishonor. A waiver of presentment is also a waiver of
notice of dishonor.

(4) Delay in giving notice of dishonor is excused if
the delay was caused by circumstances beyond the control of
the person giving the notice and the person giving the
notice exercised reasonable diligence after the cause of the

1 delay ceased to operate.

2 **Section 149.** Section 30-3-510, MCA, is amended to read:

3 "30-3-510. Evidence of dishonor and notice of dishonor.

4 (1) The following are admissible as evidence and create a
5 presumption of dishonor and of any notice of dishonor
6 therein shown stated:

7 (a) a document regular in form as provided in the
8 preceding section which subsection (2) that purports to be a
9 protest;

10 (b) the purported stamp or writing of the drawee, payor
11 bank, or presenting bank on the instrument or accompanying
12 it the instrument stating that acceptance or payment has
13 been refused unless reasons for the refusal are stated and
14 the for reasons are not consistent with dishonor;

15 (c) any a book or record of the drawee, payor bank, or
16 any collecting bank, kept in the usual course of business
17 which that shows dishonor, even though if there is no
18 evidence of who made the entry.

19 (2) A protest is a certificate of dishonor made by a
20 United States consul or vice consul or a notary public or
21 other person authorized to administer oaths by the law of
22 the place where dishonor occurs. It may be made upon
23 information satisfactory to that person. The protest must
24 identify the instrument and certify either that presentment
25 has been made or, if not made, the reason why it was not

1 made and that the instrument has been dishonored by
2 nonacceptance or nonpayment. The protest may also certify
3 that notice of dishonor has been given to some or all
4 parties."

5 **Section 150.** Section 30-3-601, MCA, is amended to read:

6 "30-3-601. Discharge of---parties and effect of
7 discharge. (1) The extent of the discharge of any party from
8 liability on an instrument is governed by the sections on:

9 {a}--payment or satisfaction--{30-3-603};--or

10 {b}--tender of payment--{30-3-604};--or

11 {c}--cancellation or renunciation--{30-3-605};--or

12 {d}--impairment--of--right--of--recourse--or--of--collateral
13 {30-3-606};--or

14 {e}--reacquisition of the instrument by--a--prior--party
15 {30-3-208};--or

16 {f}--fraudulent and material alteration--{30-3-407};--or

17 {g}--certification of a check--{30-3-411};--or

18 {h}--acceptance varying a draft--{30-3-412};--or

19 {i}--unexcused---delay---in--presentment--or--notice--of
20 dishonor or protest--{30-3-502};

21 {2}--Any The obligation of a party to pay the instrument
22 is also discharged from his liability on--an--instrument--to
23 another--party as stated in this chapter or by any other an
24 act or agreement with such the party which that would
25 discharge his an obligation to pay money under a simple

contract for-the-payment-of-money.

{3}--The-liability-of-all-parties-is-discharged-when-any party-who-has-himself-no-right-of-action-or-recourse-on--the instrument;

{a}--reacquires-the-instrument-in-his-own-right;-or

{b}--is--discharged-under-any-provision-of-this-chapter, except-as-otherwise-provided-with-respect-to--discharge--for impairment-of-recourse-or-of-collateral-{30-3-606};

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge."

Section 151. Section 30-3-603, MCA, is amended to read:

"30-3-603. Payment or-satisfaction. (1) The--liability of--any--party--is--discharged Subject to subsection (2), an instrument is paid to the extent of--his payment or satisfaction--to--the-holder-even-though-it is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim of-another--person to the instrument unless--prior--to--such--payment--or-satisfaction-the-person making-the-claim-either-supplies-indemnity--deemed--adequate by--the--party--seeking--the-discharge-or-enjoins-payment-or

satisfaction-by-order-of-a-court-of--competent--jurisdiction in--an--action--in-which-the-adverse-claimant-and-the-holder are-parties;-This-subsection-does-not;-however;-result--in the-discharge-of-the-liability;

{a}--of--a--party--who--in-bad-faith-pays-or-satisfies-a holder-who-acquired-the-instrument-by-theft-or--who--(unless having--the--rights-of-a-holder-in-due-course)-holds-through one-who-so-acquired-it;-or

{b}--of-a-party-{other-than-an-intermediary--bank--or--a payor--bank--which-is--not--a--depository-bank}-who-pays-or satisfies--the--holder--of--an--instrument--which--has--been restrictively-endorsed-in-a-manner-not-consistent--with--the terms--of--such--restrictive--endorsement under 30-3-306 by another person.

(2) Payment--or--satisfaction--may--be--made--with--the consent-of-the-holder-by-any-person-including-a-stranger--to the-instrument;-Surrender-of-the-instrument-to-such-a-person gives--him--the--rights--of--a--transferee--{30-3-201}; The obligation of a party to pay the instrument is not discharged under subsection (1) if:

{a} a claim to the instrument under 30-3-306 is enforceable against the party receiving payment and:

{i} payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) the person making payment knows that the instrument is a stolen instrument and pays a person that it knows is in wrongful possession of the instrument."

Section 152. Section 30-3-604, MCA, is amended to read:

"30-3-604. Tender of payment. (1) Any-party-making If tender of full payment to-a-holder-when-or-after-it-is--due is--discharged-to-the-extent-of-all-subsequent-liability-for interest,-costs-and-attorney's-fees of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) The-holder's-refusal-of-such If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender wholly discharges-any-party-who-has is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse against--the--party--making with respect to the obligation to which the tender relates.

~~(3) Where--the--maker--or--acceptor--of--an--instrument payable--otherwise--than--on--demand~~ If tender of payment of an amount due on an instrument is made by or on behalf of the obligor to the person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment specified stated in the instrument, when-it-is-due, it-is-equivalent-to the obligor is considered to have made tender of payment on the due date to the person entitled to enforce the instrument."

Section 153. Section 30-3-605, MCA, is amended to read:

"30-3-605. Cancellation-and Discharge by cancellation or renunciation. (1) The-holder-of-an-instrument-may-even A person entitled to enforce an instrument may, with or without consideration, discharge the obligation of any a party to pay the instrument:

(a) in--any--manner--apparent--on--the--face---of---the instrument-or-the-endorsement,-as-by-intentionally-canceling by an intentional voluntary act, such as surrender of the instrument or--the--party's--signature--by to the party; destruction, or mutilation, or cancellation of the instrument; cancellation or by striking out of the party's signature; or the addition of words to the instrument

1 indicating discharge; or

2 (b) by agreeing not to sue or otherwise renouncing his
3 rights against the party by a signed writing ~~signed--and~~
4 ~~delivered--or-by-surrender-of-the-instrument-to-the-party-to~~
5 ~~be-discharged.~~

6 (2) ~~Neither--cancellation--nor---renunciation---without~~
7 ~~surrender--of--the--instrument--affects--the--title--thereto~~
8 Cancellation or striking out of an indorsement pursuant to
9 subsection (1) does not affect the status and rights of a
10 party derived from the indorsement."

11 NEW SECTION. Section 154. Discharge of indorsers and
12 accommodation parties. (1) For the purposes of this section,
13 the term "indorser" includes a drawer having the obligation
14 stated in [section 138(3)].

15 (2) Discharge of the obligation of a party to the
16 instrument under 30-3-605 does not discharge the obligation
17 of an indorser or accommodation party having a right of
18 recourse against the discharged party.

19 (3) If a person entitled to enforce an instrument
20 agrees, with or without consideration, to a material
21 modification of the obligation of a party to the instrument,
22 including an extension of the due date, there is discharge
23 of the obligation of an indorser or accommodation party
24 having a right of recourse against the person whose
25 obligation is modified to the extent the modification causes

1 loss to the indorser or accommodation party with respect to
2 the right of recourse. The indorser or accommodation party
3 is considered to have suffered loss as a result of the
4 modification equal to the amount of the right of recourse
5 unless the person enforcing the instrument proves that no
6 loss was caused by the modification or that the loss caused
7 by the modification was less than the amount of the right of
8 recourse.

9 (4) If the obligation of a party to an instrument is
10 secured by an interest in collateral and impairment of the
11 value of the interest is caused by a person entitled to
12 enforce the instrument, there is discharge of the obligation
13 of an indorser or accommodation party having a right of
14 recourse against the obligor to the extent of the
15 impairment. The value of an interest in collateral is
16 impaired to the extent the value of the interest is reduced
17 to an amount less than the amount of the right of recourse
18 of the party asserting discharge or the reduction in value
19 of the interest causes an increase in the amount by which
20 the amount of the right of recourse exceeds the value of the
21 interest. The burden of proving impairment is on the party
22 asserting discharge.

23 (5) If the obligation of a party to an instrument is
24 secured by an interest in collateral not provided by an
25 accommodation party and the value of the interest is

1 impaired by a person entitled to enforce the instrument, the
 2 obligation of any party who is jointly and severally liable
 3 with respect to the secured obligation is discharged to the
 4 extent the impairment causes the party asserting discharge
 5 to pay more than that party would have been obliged to pay,
 6 taking into account rights of contribution, if impairment
 7 had not occurred. If the party asserting discharge is an
 8 accommodation party not entitled to discharge under
 9 subsection (4), the party is considered to have a right to
 10 contribution based on joint and several liability rather
 11 than a right to reimbursement. The burden of proving
 12 impairment is on the party asserting discharge.

13 (6) Under subsection (4) or (5), causation of
 14 impairment includes:

15 (a) failure to obtain or maintain perfection or
 16 recordation of the interest in collateral;

17 (b) release of collateral without substitution of
 18 collateral of equal value;

19 (c) failure to perform a duty to preserve the value of
 20 collateral owed, under chapter 9 or other law, to a debtor
 21 or surety or other person secondarily liable; or

22 (d) failure to comply with applicable law in disposing
 23 of collateral.

24 (7) An accommodation party is not discharged under
 25 subsection (3) or (4) unless the person agreeing to the

1 modification or causing the impairment knows of the
 2 accommodation or has notice under 30-3-415(3) that the
 3 instrument was signed for accommodation. There is no
 4 discharge of any party under subsection (3), (4), or (5) if:

5 (a) the party asserting discharge consents to the event
 6 or conduct that is the basis of the discharge; or

7 (b) the instrument or a separate agreement of the party
 8 provides for waiver of discharge under this section, either
 9 specifically or by general language, indicating that parties
 10 to the instrument waive defenses based on suretyship or
 11 impairment of collateral.

12 **Section 155.** Section 30-4-102, MCA, is amended to read:

13 "30-4-102. **Applicability.** (1) To the extent that items
 14 within this chapter are also within the scope of ~~chapters~~
 15 chapters 3, 5, and 8, they are subject to the provisions of
 16 those chapters. In the event of conflict the provisions of
 17 this chapter govern those of ~~Chapter~~ chapter 3 but the
 18 provisions of ~~Chapter~~ chapters 5 and 8 govern those of this
 19 chapter.

20 (2) The liability of a bank for action or nonaction
 21 with respect to any item handled by it for purposes of
 22 presentment, payment or collection is governed by the law of
 23 the place where the bank is located. In the case of action
 24 or nonaction by or at a branch or separate office of a bank,
 25 its liability is governed by the law of the place where the

branch or separate office is located."

Section 156. Section 30-4-103, MCA, is amended to read:

***30-4-103. Variation by agreement -- measure of damages**
 -- ~~certain~~ action constituting ordinary care. (1) The effect of the provisions of this chapter may be varied by agreement, ~~except--that-no~~ but the parties to the agreement can may not disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such the lack or failure;--~~but.~~ However, the parties may determine by agreement determine the standards by which such the bank's responsibility is to be measured if such those standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating ~~letters~~ circulars, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to Federal Reserve regulations or operating ~~letters~~ circulars constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse and similar rules ~~and-the-like~~ or with a general banking usage not disapproved by this chapter, constitutes prima facie ~~constitutes~~ the exercise of

ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures which that may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which that could not have been realized by the use exercise of ordinary care; ~~and-where.~~ If there is also bad faith it includes any other damages; ~~if-any;~~ suffered-by the party suffered as a proximate consequence."

Section 157. Section 30-4-104, MCA, is amended to read:

***30-4-104. Definitions and index of definitions.** (1) In this chapter unless the context otherwise requires:

(a) "Account" means any deposit or credit account with a bank and includes a checking demand, time, ~~interest-or~~ savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that the part of any a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearinghouse" means any an association of banks or other payors regularly clearing items;

(e) "Customer" means any a person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying maintaining an account with at another bank;

(f) "Documentary draft" means any--negotiable--or nonnegotiable a draft with-accompanying to be presented for acceptance or payment if specified documents, certificated securities or other-papers-to--be--delivered--against--honor transfer statements for uncertificated securities, or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) "Draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an order.

~~(g)(h)~~ "Item" means any an instrument for-the-payment of-money-even-though-it--is--not--negotiable--but--does--not include or a promise or an order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by [sections 189 through 226] or a credit or debit card slip;

~~(h)(i)~~ "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

~~(i)--"Properly-payable"--includes--the--availability-of funds-for--payment--at--the--time--of--decision--to--pay--or dishonor;~~

(j) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as instructed agreed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Bank". 30-4-105.

"Collecting bank". 30-4-105.

"Depository bank". 30-4-105.

"Intermediary bank". 30-4-105.

"Payor bank". 30-4-105.

"Presenting bank". 30-4-105.

"Presentment notice". [section 162].

~~"Remitting bank". 30-4-105.~~

(3) The following definitions in other chapters apply to this chapter:

"Acceptance". 30-3-410.

"Alteration". 30-3-407.
"Cashier's check". 30-3-104.
"Certificate of deposit". 30-3-104.
"Certification".--30-3-411.
"Certified check". 30-3-410.
"Check". 30-3-104.
"Draft".--30-3-104.
"Drawee". 30-3-102.
"Good faith". 30-3-102.
"Holder in due course". 30-3-302.
"Instrument". 30-3-104.
"Notice of dishonor". 30-3-508.
"Order". 30-3-102.
"Ordinary care". 30-3-102.
"Person entitled to enforce". 30-3-301.
"Presentment". 30-3-504.
"Promise". 30-3-102.
"Protest".--30-3-509.
"Prove". 30-3-102.
"Secondary-party".--30-3-102.
"Teller's check". 30-3-104.
"Unauthorized signature". 30-3-404.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 158. Section 30-4-105, MCA, is amended to read:

"30-4-105. "Bank" -- "Depository depository bank" -- "intermediary bank" -- "collecting bank" -- "payor bank" -- "presenting bank" ----"remitting--bank". In this chapter unless the context otherwise requires:

(1) "bank" means any person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "Depository depository bank" means the first bank to which take an item is--transferred--for--collection even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor payor bank" means a bank by which an item is payable as drawn or accepted that is the drawee of a draft;

(4) "intermediary intermediary bank" means any a bank to which an item is transferred in course of collection except the depository or payor bank;

(5) "Collecting collecting bank" means any a bank handling the an item for collection except the payor bank;

(6) "Presenting presenting bank" means any a bank presenting an item except a payor bank;

(7) "Remitting--bank"--means any--payor--or--intermediary bank--remitting--for--an--item."

NEW SECTION. Section 159. Payable through or payable

at bank -- collecting bank. (1) If an item states that it is "payable through" a bank identified in the item:

(a) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, the item is drawn on the bank.

Section 160. Section 30-4-106, MCA, is amended to read:

"30-4-106. Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders ~~shall~~ must be given under this chapter and under Chapter chapter 3."

Section 161. Section 30-4-108, MCA, is amended to read:

"30-4-108. Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment ~~may,--in--the--case of a specific items~~ item drawn on a payor other than a bank and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this code for a period not ~~in-excess~~ of-an exceeding 2 additional banking day days without discharge of ~~secondary--parties--and--without~~ drawers or

indorsers or liability to its transferor or ~~any a~~ prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code or by instructions is excused if:

(a) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank ~~provided-it;~~ and

(b) the bank exercises such diligence as the circumstances require."

NEW SECTION. Section 162. Truncation. (1) "Truncation agreement" means an agreement, clearinghouse rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the truncation agreement.

(2) If presentment is made pursuant to a truncation agreement, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

(3) An intermediary bank handling a presentment notice pursuant to a truncation agreement has the rights of a holder of the item to the same extent it would have had rights in the item if the item had been physically transferred to it in the course of collection.

NEW SECTION. Section 163. Statute of limitations. An action to enforce an obligation, duty, or right arising under this chapter must be commenced within 3 years after the cause of action accrues.

Section 164. Section 30-4-201, MCA, is amended to read:

"30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits -- applicability of chapter -- item endorsed "pay any bank".

(1) Unless a contrary intent clearly appears and prior--to before the time that a settlement given by a collecting bank for an item is or becomes final (~~subsection subsections~~ (3) and (4) of 30-4-211 and ~~30-4-212 subsections~~ (2) and (3) of 30-4-213), the bank with respect to the item is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject

to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of recoupment or setoff. When If an item is handled by banks for purposes of presentment, payment, and collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank."

Section 165. Section 30-4-202, MCA, is amended to read:

"30-4-202. Responsibility for collection or return -- when action seasonable timely. (1) A collecting bank must use exercise ordinary care in:

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor ~~or-directly-to-the-depositary-bank-under subsection-(2)-of-30-4-212~~ after learning that the item has

1 not been paid or accepted, as the case may be; and

2 (c) settling for an item when the bank receives final
3 settlement; and

4 (d) ~~making-or-providing-for-any-necessary-protest;-and~~

5 ~~te~~ notifying its transferor of any loss or delay in
6 transit within a reasonable time after discovery thereof.

7 (2) A collecting bank exercises ordinary care under
8 subsection (1) by taking proper action before its midnight
9 deadline following receipt of an item, notice, or payment
10 acts-seasonably;-taking settlement. Taking proper action
11 within a reasonably longer time may be-seasonable constitute
12 the exercise of ordinary care, but the bank has the burden
13 of so establishing.

14 (3) Subject to subsection (1)(a), a bank is not liable
15 for the insolvency, neglect, misconduct, mistake, or default
16 of another bank or person or for loss or destruction of an
17 item in transit or in the possession of others."

18 **Section 166.** Section 30-4-203, MCA, is amended to read:

19 "30-4-203. Effect of instructions. Subject to the
20 provisions of ~~Chapter~~ chapter 3 concerning conversion of
21 instruments (30-3-419) and ~~the-provisions-of-both-Chapter--3~~
22 ~~and---this---chapter---concerning~~ restrictive endorsements
23 ~~(30-3-205),~~ only a collecting bank's transferor can give
24 instructions which that affect the bank or constitute notice
25 to it and a collecting bank is not liable to prior parties

1 for any action taken pursuant to such instructions or in
2 accordance with any agreement with its transferor."

3 **Section 167.** Section 30-4-204, MCA, is amended to read:

4 "30-4-204. Methods of sending and presenting -- sending
5 direct directly to payor bank. (1) A collecting bank must
6 shall send items by a reasonably prompt method, taking into
7 consideration any relevant instructions, the nature of the
8 item, the number of such those items on hand, and the cost
9 of collection involved and the method generally used by it
10 or others to present such those items.

11 (2) A collecting bank may send:

12 (a) any an item direct directly to the payor bank;

13 (b) any an item to any nonbank payor if authorized by
14 its transferor; and

15 (c) any an item other than documentary drafts to any a
16 nonbank payor, if authorized by ~~Federal--Reserve~~ federal
17 reserve regulation or operating ~~letter~~ circular,
18 clearinghouse rule or the like.

19 (3) Presentment may be made by a presenting bank at a
20 place where the payor bank or other payor has requested that
21 presentment be made."

22 **Section 168.** Section 30-4-205, MCA, is amended to read:

23 "30-4-205. ~~Supplying--missing--endorsement----~~no-notice
24 ~~from-prior-endorsement~~ Depository bank holder of unindorsed
25 item. {i} A If a customer is a holder of an item that is

delivered to a depository bank which has taken an item for collection:

(1) the depository bank becomes a holder of the item at the time it receives the item for collection, whether or not the customer indorses, and if it satisfies the other requirements of 30-3-302, it may be a holder in due course; and

(2) may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was warrants to subsequent collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited by a customer or credited to his the customer's account is effective as the customer's endorsement.

{2}--An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor."

Section 169. Section 30-4-206, MCA, is amended to read:

"30-4-206. Transfer between banks. Any agreed method which that identifies the transferor bank is sufficient for the item's further transfer to another bank."

Section 170. Section 30-4-207, MCA, is amended to read:

"30-4-207. Warranties--of--customer-and-collecting-bank on-transfer-or-presentment--of--items-----time--for--claims

Transfer warranties. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

{a}--he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

{b}--he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith;

{i}--to--a--maker--with--respect--to--the--maker's--own signature; or

{ii}--to--a--drawer--with--respect--to--the--drawer's--own signature; whether or not the drawer is also the drawee; or

{iii}--to--an--acceptor--of--an--item--if--the--holder--in--due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

{c}--the--item--has--not--been--materially--altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in

1 good-faith-

2 {i}-to-the-maker-of-a-note;-or

3 {ii}-to-the-drawer-of-a-draft-whether-or-not-the--drawer

4 is-also-the-drawee;-or

5 {iii}-to--the--acceptor--of--an--item-with-respect-to-an

6 alteration-made-prior-to-the-acceptance-if-the-holder-in-due

7 course-took-the-item-after-the-acceptance-even--though--the

8 acceptance---provided---"payable--as--originally--drawn"--or

9 equivalent-terms;-or

10 {iv}-to-the-acceptor-of--an--item--with--respect--to--an

11 alteration-made-after-the-acceptance;

12 {2}--Each A customer and or collecting bank who that

13 transfers an item and receives a settlement or other

14 consideration for-it warrants to his the transferee and to

15 any subsequent collecting bank who-takes-the-item-in-good

16 faith that:

17 (a) he-has-a-good-title-to-the-item-or-is-authorized-to

18 obtain-payment-or-acceptance-on-behalf-of-one-who-has-a-good

19 title-and-the-transfer-is-otherwise-rightful the warrantor

20 is a person entitled to enforce the item; and

21 (b) all signatures on the item are genuine-or authentic

22 and authorized; and

23 (c) the item has not been materially altered; and

24 (d) no the item is not subject to a defense or claim in

25 recoupment stated in 30-3-305(1) of any party is-good

1 against-him to the item that can be asserted against the

2 warrantor; and

3 (e) he the warrantor has no knowledge of any insolvency

4 proceeding instituted commenced with respect to the maker or

5 acceptor or, in the case of an unaccepted draft, the drawer

6 of-an-unaccepted-item.

7 {2} In-addition--each If an item is dishonored, a

8 customer and collecting bank so transferring an the item and

9 receiving a settlement or other consideration engages-that

10 upon-dishonor-and--any--necessary--notice--of--dishonor--and

11 protest--he--will--take--up--the--item is obliged to pay the

12 amount due on the item according to the terms of the item at

13 the time it was transferred or, if the transfer was of an

14 incomplete item, according to its terms when completed as

15 stated in 30-3-115 and 30-3-407. The obligation of a

16 transferor is owed to the transferee and to any subsequent

17 collecting bank that takes the item in good faith. A

18 transferor may not disclaim its obligation under this

19 subsection by an indorsement stating that it is made

20 "without recourse" or otherwise disclaiming liability.

21 (3) The A person to whom the warranties and--the

22 engagement--to--honor--set--forth--in--the---two---preceding

23 subsections-arise-notwithstanding-the-absence-of-endorsement

24 or--words--of--guaranty--or--warranty--in--the--transfer--or

25 presentment--and--a-collecting-bank-remains-liable-for-their

breach-despite-remittance-to--its--transferor,--Damages--for
 breach--of--such-warranties-or-engagement-to-honor-shall-not
 exceed--the--consideration--received--by--the--customer---or
 collecting---bank---responsible--plus--finance--charges--and
 expenses-related-to-the-item,-if-any under subsection (1)
are made and who took the item in good faith may recover
from the warrantor as damages for breach of warranty an
amount equal to the loss suffered as a result of the breach,
but not more than the amount of the item plus expenses and
loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) cannot be
disclaimed with respect to checks. Unless notice of a claim
for breach of warranty under this section is made given to
the warrantor within a--reasonable-time 30 days after the
person-claiming-learns claimant has reason to know of the
breach and the identity of the warrantor, the person-liable
warrantor is discharged to the extent of any loss caused by
the delay in making giving notice of the claim.

(5) A cause of action for breach of warranty under this
section accrues when the claimant has reason to know of the
breach."

NEW SECTION. Section 171. Presentment warranties. (1)

If an unaccepted draft is presented to the drawee for
 payment or acceptance and the drawee pays or accepts the
 draft, the person obtaining payment or acceptance, at the

time of presentment, and a previous transferor of the draft,
 at the time of transfer, warrant to the drawee that pays or
 accepts the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor
 transferred the draft, a person entitled to enforce the
 draft or authorized to obtain payment or acceptance of the
 draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature
 of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any
 warrantor damages for breach of warranty equal to the amount
 paid by the drawee less the amount the drawee received or is
 entitled to receive from the drawer because of the payment.
 In addition, the drawee is entitled to compensation for
 expenses and loss of interest resulting from the breach. The
 right of the drawee to recover damages under this subsection
 is not affected by any failure of the drawee to exercise
 ordinary care in making payment. If the drawee accepts the
 draft:

(a) breach of warranty is a defense to the obligation
 of the acceptor; and

(b) the acceptor is entitled to recover from any
 warrantor for breach of warranty the amounts stated in this
 subsection (2) if the acceptor makes payment with respect to

1 the draft.

2 (3) If a drawee asserts a claim for breach of warranty
3 under subsection (1) based on an unauthorized indorsement of
4 the draft or an alteration of the draft, the warrantor may
5 defend by proving that the indorsement is effective under
6 30-3-405 or [section 129] or the drawer is precluded under
7 30-3-406 or 30-4-406 from asserting against the drawee the
8 unauthorized indorsement or alteration.

9 (4) This subsection applies if a dishonored draft is
10 presented for payment to the drawer or an indorser or any
11 other item is presented for payment to a party obliged to
12 pay the item and the item is paid. The person obtaining
13 payment and a prior transferor of the item warrant to the
14 person making payment in good faith that the warrantor is or
15 was, at the time the warrantor transferred the item, a
16 person entitled to enforce the item or authorized to obtain
17 payment on behalf of a person entitled to enforce the item.
18 The person making payment may recover from any warrantor for
19 breach of warranty an amount equal to the amount paid plus
20 expenses and loss of interest resulting from the breach.

21 (5) The warranties stated in subsections (1) and (4)
22 cannot be disclaimed with respect to checks. Unless notice
23 of a claim for breach of warranty is given to the warrantor
24 within 30 days after the claimant has reason to know of the
25 breach and the identity of the warrantor, the warrantor is

1 discharged to the extent of any loss caused by the delay in
2 giving notice of the claim.

3 (6) A cause of action for breach of warranty under this
4 section accrues when the claimant has reason to know of the
5 breach.

6 NEW SECTION. Section 172. Encoding and retention
7 warranties. (1) A person that encodes information on or with
8 respect to an item after issue warrants to any subsequent
9 collecting bank and to the payor bank or other payor that
10 the information is correctly encoded. If the customer of a
11 depository bank encodes, that bank also makes the warranty.

12 (2) A person that undertakes to retain an item pursuant
13 to a truncation agreement warrants to any subsequent
14 collecting bank and to the payor bank or other payor that
15 retention and presentment of the item comply with the
16 truncation agreement. If a customer of a depository bank
17 undertakes to retain an item, that bank also makes this
18 warranty.

19 (3) A person to whom warranties are made under this
20 section and who took the item in good faith may recover from
21 the warrantor as damages for breach of warranty an amount
22 equal to the loss suffered as a result of the breach plus
23 expenses and loss of interest incurred as a result of the
24 breach.

25 **Section 173.** Section 30-4-208, MCA, is amended to read:

1 "30-4-208. Security interest of collecting bank in
2 items, accompanying documents, and proceeds. (1) A
3 collecting bank has a security interest in an item and any
4 accompanying documents or the proceeds of either:

5 (a) in case of an item deposited in an account, to the
6 extent to which credit given for the item has been withdrawn
7 or applied;

8 (b) in case of an item for which it has given credit
9 available for withdrawal as of right, to the extent of the
10 credit given, whether or not the credit is drawn upon and
11 whether or not there is a right of charge-back; or

12 (c) if it makes an advance on or against the item.

13 (2) When if credit which has been given for several
14 items received at one time or pursuant to a single agreement
15 is withdrawn or applied in part, the security interest
16 remains upon all the items, any accompanying documents, or
17 the proceeds of either. For the purpose of this section,
18 credits first given are first withdrawn.

19 (3) Receipt by a collecting bank of a final settlement
20 for an item is a realization on its security interest in the
21 item, accompanying documents and proceeds. To the extent and
22 so long as the bank does not receive final settlement for
23 the item or give up possession of the item or accompanying
24 documents for purposes other than collection, the security
25 interest continues and is subject to the provisions of

1 ~~Chapter~~ chapter 9 except that:

2 (a) no security agreement is necessary to make the
3 security interest enforceable (30-9-203); and

4 (b) no filing is required to perfect the security
5 interest; and

6 (c) the security interest has priority over conflicting
7 perfected security interests in the item, accompanying
8 documents or proceeds."

9 **Section 174.** Section 30-4-209, MCA, is amended to read:

10 "30-4-209. When bank gives value for purposes of holder
11 in due course. For purposes of determining its status as a
12 holder in due course, the a bank has given value to the
13 extent that it has a security interest in an item, provided
14 that the bank otherwise complies with the requirements of
15 30-3-302 on what constitutes a holder in due course."

16 **Section 175.** Section 30-4-210, MCA, is amended to read:

17 "30-4-210. Presentment by notice of item not payable
18 by, through, or at a bank -- liability of secondary parties.
19 (1) Unless otherwise instructed, a collecting bank may
20 present an item not payable by, through, or at a bank by
21 sending to the party to accept or pay a written notice that
22 the bank holds the item for acceptance or payment. The
23 notice must be sent in time to be received on or before the
24 day when presentment is due and the bank must meet any
25 requirement of the party to accept or pay under 30-3-505

30-3-504 by the close of the bank's next banking day after it knows of the requirement.

(2) Where If presentment is made by notice and neither honor payment, acceptance, nor request for compliance with a requirement under 30-3-505 30-3-504 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him it notice of the facts."

Section 176. Section 30-4-211, MCA, is amended to read:

"30-4-211. Media--of--remittance-----provisional Medium and final time of settlement in-remittance--cases by bank.

(1) A--collecting With respect to settlement by a bank, the medium and time of may-take-in settlement of-an-item may be prescribed by federal reserve regulations or circulars, clearinghouse rules, and the like or by agreement. In the absence of such prescription:

(a) a-check-of-the-remitting-bank-or-of-another-bank-on any--bank-except-the-remitting-bank the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; or and

(b) the time of settlement is:

(i) with respect to tender of settlement by cash, a cashier's check, or a teller's check, or-similar-primary

obligation-of-a-remitting-bank--which--is--a--member--of--or clears--through--a-member-of-the-same-clearinghouse-or-group as-the-collecting-bank when the cash or check is sent or delivered; or

(ii) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

{c}(iii) appropriate-authority-to-charge with respect to tender of settlement by a credit or debit to an account of the-remitting in a bank, or--of--another--bank--with--the collecting--bank when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

{d}(iv) if-the-item-is-drawn-upon-or-payable-by-a-person other--than--a--bank,--a-cashier's-check,-certified-check-or other-bank-check-or-obligation with respect to tender of settlement by a funds transfer, when payment is made pursuant to [section 219 (1)] to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) or the time of settlement is not fixed by subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

{2}(3) If settlement for an item is made by cashier's

check or teller's check and the person receiving settlement,
before its midnight deadline;

(a) the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards the check for collection, a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization settlement is final when the check is finally paid; or

(b) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(3)(4) A If settlement for an item by means of a remittance instrument or authorization is made by giving authority to charge is or becomes a final settlement as to both the person making and the person the account of the bank giving settlement in the bank receiving the settlement:

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, at the time the remittance instrument or

authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b), at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline, at such midnight deadline settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item."

Section 177. Section 30-4-212, MCA, is amended to read:

"30-4-212. Right of charge-back or refund -- liability of collecting bank -- return of item. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or

1 obtain refund from its customer, whether or not it is able
 2 to return the items if by its midnight deadline or within a
 3 longer reasonable time after it learns the facts it returns
 4 the item or sends notification of the facts. If the return
 5 or notice is delayed beyond the bank's midnight deadline or
 6 a longer reasonable time after it learns the facts, the bank
 7 may revoke the settlement, charge back the credit, or obtain
 8 refund from its customer but is liable for any loss
 9 resulting from the delay. These rights to revoke, charge
 10 back and obtain refund terminate if and when a settlement
 11 for the item received by the bank is or becomes final
 12 (subsection subsections (3) and (4) of 30-4-211 and
 13 subsections (2) and (3) of 30-4-213).

14 (2) ~~Within the time and manner prescribed by this~~
 15 ~~section and 30-4-301, an intermediary or payor bank, as the~~
 16 ~~case may be, may return an unpaid item directly to the~~
 17 ~~depository bank and may send for collection a draft on the~~
 18 ~~depository bank and obtain reimbursement; in such case, if~~
 19 ~~the depository bank has received provisional settlement for~~
 20 ~~the item, it must reimburse the bank drawing the draft and~~
 21 ~~any provisional credits for the item between banks shall~~
 22 ~~become and remain final; A collecting bank returns an item~~
 23 when it is sent or delivered to the bank's customer or
 24 transferor or pursuant to its instructions.

25 (3) A depository bank which is also the payor may

1 charge back the amount of an item to its customer's account
 2 or obtain refund in accordance with the section governing
 3 return of an item received by a payor bank for credit on its
 4 books (30-4-301).

5 (4) The right to charge-back is not affected by:

6 (a) prior previous use of the a credit given for the
 7 item; or

8 (b) failure by any bank to exercise ordinary care with
 9 respect to the item but any bank so failing remains liable.

10 (5) A failure to charge back or claim refund does not
 11 affect other rights of the bank against the customer or any
 12 other party.

13 (6) If credit is given in dollars as the equivalent of
 14 the value of an item payable in a foreign currency money,
 15 the dollar amount of any charge-back or refund ~~shall~~ must be
 16 calculated on the basis of the buying--sight bank-offered
 17 spot rate for the foreign currency money prevailing on the
 18 day when the person entitled to the charge-back or refund
 19 learns that it will not receive payment in ordinary course."

20 **Section 178.** Section 30-4-213, MCA, is amended to read:

21 "30-4-213. Final payment of item by payor bank -- when
 22 provisional debits and credits become final -- when certain
 23 credits become available for withdrawal. (1) An item is
 24 finally paid by a payor bank when the bank has done any of
 25 the following, whichever happens first:

1 (a) paid the item in cash; or
 2 (b) settled for the item without ~~reserving~~ having a
 3 ~~right to revoke the settlement and-without-having-such-right~~
 4 ~~under statute, clearinghouse rule, or agreement; or~~
 5 ~~{c}--completed-the-process-of-posting-the--item--to--the~~
 6 ~~indicated-account-of-the-drawer,-maker-or-other-person-to-be~~
 7 ~~charged-there-with;-or~~
 8 ~~{d}{c}~~ made a provisional settlement for the item and
 9 failed to revoke the settlement in the time and manner
 10 permitted by statute, clearinghouse rule or agreement. Upon
 11 ~~a-final-payment-under-subparagraphs--{b},--{c}--or--{d}--the~~
 12 ~~payor-bank-shall-be-accountable-for-the-amount-of-the-item-~~
 13 (2) If provisional settlement for an item between the
 14 presenting and payor banks is made through a clearinghouse
 15 or by debits or credits in an account between them, then to
 16 the extent that provisional debits or credits for the item
 17 are entered in accounts between the presenting and payor
 18 banks or between the presenting and successive prior
 19 collecting banks seriatim, they become final upon final
 20 payment of the item by the payor bank.
 21 (3) If a collecting bank receives a settlement for an
 22 item which is or becomes final (~~subsection~~ subsections (3)
 23 and (4) of 30-4-211, and subsection (2) of 30-4-213) the
 24 bank is accountable to its customer for the amount of the
 25 item and any provisional credit given for the item in an

1 account with its customer becomes final.
 2 (4) Subject to applicable law stating a time for
 3 availability of funds and any right of the bank to apply the
 4 credit to an obligation of the customer, credit given by a
 5 bank for an item in an a customer's account with--its
 6 customer becomes available for withdrawal as of right:
 7 (a) ~~in--any--case--where~~ if the bank has received a
 8 provisional settlement for the item,--when such settlement
 9 becomes final and the bank has had a reasonable time to
 10 ~~learn-that-the-settlement-is-final~~ receive return of the
 11 item and the item has not been received within that time;
 12 (b) ~~in--any--case--where~~ if the bank is both a the
 13 depository bank and a the payor bank and the item is finally
 14 paid,--at the opening of the bank's second banking day
 15 following receipt of the item.
 16 (5) ~~A--deposit--of--money--in-a-bank-is-final-when-made~~
 17 ~~but,-subject~~ Subject to applicable law stating a time for
 18 availability of funds and any right of the a bank to apply
 19 the a deposit to an obligation of the customer depositor,
 20 the a deposit of money becomes available for withdrawal as
 21 of right at the opening of the bank's next banking day
 22 following after receipt of the deposit."
 23 **Section 179.** Section 30-4-214, MCA, is amended to read:
 24 "30-4-214. Insolvency and preference. (1) Any item in
 25 or coming into the possession of a payor or collecting bank

1 which suspends payment and which item is not finally paid
2 shall be returned by the receiver, trustee or agent in
3 charge of the closed bank to the presenting bank or the
4 closed bank's customer.

5 (2) If a payor bank finally pays an item and suspends
6 payments without making a settlement for the item with its
7 customer or the presenting bank which settlement is or
8 becomes final, the owner of the item has a preferred claim
9 against the payor bank.

10 (3) If a payor bank gives or a collecting bank gives or
11 receives a provisional settlement for an item and thereafter
12 suspends payments, the suspension does not prevent or
13 interfere with the settlement becoming final if such
14 finality occurs automatically upon the lapse of certain time
15 or the happening of certain events (~~subsection~~ subsections
16 (3) and (4) of 30-4-211, and ~~subsections (1) and (2)~~ (1)(C), (2),
17 and (3) of 30-4-213).

18 (4) If a collecting bank receives from subsequent
19 parties settlement for an item which settlement is or
20 becomes final and suspends payments without making a
21 settlement for the item with its customer which that is or
22 becomes final, the owner of the item has a preferred claim
23 against such the collecting bank."

24 **Section 180.** Section 30-4-301, MCA, is amended to read:

25 "30-4-301. Deferred posting -- recovery of payment by

1 return of items -- time of dishonor -- return of items by
2 payor bank. (1) Where-an-authorized-settlement If a payor
3 bank settles for a demand item ~~to~~ other than a documentary
4 draft, ~~received-by-a-payor-bank~~ presented otherwise than for
5 immediate payment over the counter ~~has--been--made~~ before
6 midnight of the banking day of receipt, the payor bank may
7 revoke the settlement and recover any payment settlement if
8 before it has ~~made--final--payment~~ paid the item in cash
9 (subsection (1)(a) of 30-4-213) and before its midnight
10 deadline it:

11 (a) returns the item; or

12 (b) sends written notice of dishonor or nonpayment if
13 the item is ~~held-for-protest-or-is-otherwise~~ unavailable for
14 return.

15 (2) If a demand item is received by a payor bank for
16 credit on its books it may return such item or send notice
17 of dishonor and may revoke any credit given or recover the
18 amount thereof withdrawn by its customer, if it acts within
19 the time limit and in the manner specified in the preceding
20 subsection.

21 (3) Unless previous notice of dishonor has been sent an
22 item is dishonored at the time when for purposes of dishonor
23 it is returned or notice sent in accordance with this
24 section.

25 (4) An item is returned:

(a) as to an item received presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with its clearinghouse rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions."

Section 181. Section 30-4-302, MCA, is amended to read:

"30-4-302. Payor bank's responsibility for late return of item. (1) ~~in the absence of a valid defense such as breach of a presentment warranty (subsection (1) of 30-4-207), settlement effected or the like, if~~ If an item is presented on to and received by a payor bank the bank is accountable for the amount of:

(1)(a) a demand item, other than a documentary draft, whether properly payable or not if the bank, in any case where in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay settle for or return the item or send notice of dishonor until after its midnight deadline; or

(2)(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and

accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) is subject to defenses based on breach of a presentment warranty ([section 171]) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank."

Section 182. Section 30-4-303, MCA, is amended to read:

"30-4-303. When items subject to notice, stop order, legal process or setoff -- order in which items may be charged or certified. (1) Any knowledge, notice, or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend, or modify such right or duty if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the ~~bank has done~~ any earliest of the following:

(a) accepted or certified the bank accepts or certifies the item;

(b) paid the bank pays the item in cash;

(c) settled the bank settles for the item without

1 reserving having a right to revoke the settlement and
 2 ~~without-having-such-right~~ under statute, clearinghouse rule,
 3 or agreement;

4 (d) ~~completed-the-process-of-posting-the--item--to--the~~
 5 ~~indicated-account-of-the-drawer,-maker-or-other-person-to-be~~
 6 ~~charged--therewith-or-otherwise-has-evidenced-by-examination~~
 7 ~~of-such-indicated-account-and-by-action-its-decision-to--pay~~
 8 ~~the-item,-or~~

9 ~~{e}--become~~ the bank becomes accountable for the amount
 10 of the item under ~~subsection-{1}{d}-of-30-4-213-and 30-4-302~~
 11 dealing with the payor bank's responsibility for late return
 12 of items; or

13 {e} with respect to checks, a cutoff hour no earlier
 14 than 1 hour after the opening of the next banking day after
 15 the banking day on which the bank received the check and no
 16 later than the close of that banking day or, if no cutoff
 17 hour is fixed, the close of the next banking day after the
 18 banking day on which the bank received the check.

19 (2) Subject to the provisions of subsection (1) items
 20 may be accepted, paid, certified, or charged to the
 21 indicated account of its customer in any order convenient to
 22 the bank."

23 **Section 183.** Section 30-4-401, MCA, is amended to read:

24 "30-4-401. When bank may charge customer's account. (1)
 25 ~~As-against-its-customer,-a~~ A bank may charge against his the

1 account any of a customer an item which that is otherwise
 2 properly payable from that account even though the charge
 3 creates an overdraft. An item is properly payable if it is
 4 authorized by the customer and is in accordance with any
 5 agreement between the customer and the bank.

6 (2) A customer is not liable for the amount of an
 7 overdraft if the customer neither signed the item nor
 8 benefited from the proceeds of the item.

9 (3) A bank may charge against the account of a customer
 10 a check that is otherwise properly payable from the account,
 11 even though payment was made before the date of the check,
 12 unless the customer has given notice to the bank of the
 13 postdating describing the check with reasonable certainty.
 14 The notice will be effective for the period stated in
 15 30-4-403(2) for stop orders and must be received at a time
 16 and in a manner as to afford the bank a reasonable
 17 opportunity to act on it before any action by the bank with
 18 respect to the check described in 30-4-303. If a bank
 19 charges against the account of a customer a check before the
 20 date stated in the notice of postdating, the bank is liable
 21 for damages for the loss resulting from its act. The loss
 22 may include damages for dishonor of subsequent items
 23 pursuant to 30-4-402.

24 {2}{4} A bank which that in good faith makes payment to
 25 a holder may charge the indicated account of its customer

1 according to:

2 (a) the original tenor terms of ~~his~~ the altered item;
3 or

4 (b) the ~~tenor~~ terms of ~~his~~ the completed item, even
5 though the bank knows the item has been completed unless the
6 bank has notice that the completion was improper."

7 **Section 184.** Section 30-4-402, MCA, is amended to read:

8 "30-4-402. Bank's liability to customer for wrongful
9 dishonor -- time of determining insufficiency of account.

10 (1) Except as otherwise provided in this chapter, a payor
11 bank wrongfully dishonors an item if it dishonors an item
12 that is properly payable, but a bank may dishonor an item
13 that would create an overdraft unless it has agreed to pay
14 the overdraft.

15 (2) A payor bank is liable to its customer for damages
16 proximately caused by the wrongful dishonor of an item. When
17 the--dishonor--occurs-through-mistake--liability Liability is
18 limited to actual damages proved--if-so--proximately--caused
19 and--proved-damages and may include damages for an arrest or
20 prosecution of the customer or other consequential damages.
21 Whether any consequential damages are proximately caused by
22 the wrongful dishonor is a question of fact to be determined
23 in each case.

24 (3) A payor bank's determination of the customer's
25 account balance on which a decision to dishonor for

1 insufficiency of available funds is based may be made at any
2 time between the time the item is received by the payor bank
3 and the time that the payor bank returns the item or gives
4 notice in lieu of return, and no more than one such
5 determination need be made. If, at the election of the payor
6 bank, a subsequent balance determination is made for the
7 purpose of reevaluating the bank's decision to dishonor the
8 item, the account balance at that time is determinative of
9 whether a dishonor for insufficiency of available funds is
10 wrongful."

11 **Section 185.** Section 30-4-403, MCA, is amended to read:

12 "30-4-403. Customer's right to stop payment -- burden
13 of proof of loss. (1) Subject to 27-1-717, a customer or any
14 person authorized to draw on the account if there is more
15 than one may by-order-to-his-bank stop payment of any item
16 payable--for--his-account-but-the-order-must-be drawn on the
17 customer's account or close the account by an order to the
18 bank describing the item or account with reasonable
19 certainty and received by the bank at such a time and in
20 such a manner as to afford the bank a reasonable opportunity
21 to act on it prior-to before any action by the bank with
22 respect to the item described in 30-4-303. If the signature
23 of more than one person is required to draw on an account,
24 any of these persons may stop payment or close the account.

25 (2) An oral A stop order is binding-upon-the-bank--only

for effective for 6 months after the time it is received,
but it lapses after 14 calendar days unless if the original
order was oral and was not confirmed in writing within that
period. A written stop order is effective for only may be
renewed for additional 6 months unless renewed in 6 month
periods by a writing given to the bank within a period
during which the stop order is effective.

(3) The burden of establishing the fact and amount of
 loss resulting from the payment of an item contrary to a
 binding stop payment order or order to close an account is
on the customer. The loss from payment of an item contrary
to a binding stop payment order may include damages for
dishonor of subsequent items pursuant to 30-4-402."

Section 186. Section 30-4-406, MCA, is amended to read:

"30-4-406. Customer's duty to discover and report
 unauthorized signature or alteration. (1) When a A bank that
sends or makes available to its a customer a statement of
account accompanied by items paid in good faith in support
of the debit entries or holds the statement and items
pursuant to a request or instructions of its customer or
otherwise in a reasonable manner makes the statement and
items available to the customer, the customer must exercise
reasonable care and promptness to examine the statement and
items to discover his unauthorized signature or any
alteration on an item and must notify the bank promptly

after discovery thereof showing payment of items for the
account shall either return to the customer the items paid
or provide information in the statement of account
sufficient to allow the customer to identify the items paid.
The statement of account provides sufficient information if
the item is described by item number, amount, and date of
payment.

(2) If the items are not returned to the customer, the
person retaining the items shall either retain the items or,
if the items are destroyed, maintain the capacity to furnish
legible copies of the items until the expiration of 7 years
after receipt of the items. A customer may request an item
from the bank that paid the item, and that bank must provide
in a reasonable time either the item or, if the item has
been destroyed or is not otherwise obtainable, a legible
copy of the item.

(3) If a bank sends or makes available a statement of
account or items pursuant to subsection (1), the customer
shall exercise reasonable promptness in examining the
statement or the item to determine whether any payment was
not authorized because of an alteration of an item or
because a purported signature by or on behalf of the
customer was not authorized. If, based on the statement or
items provided, the customer should reasonably have
discovered the unauthorized payment, the customer has a duty

1 to give prompt notification to the bank of the relevant
2 facts.

3 {2}{4} If the bank establishes proves that the customer
4 failed with respect to an item to comply with the duties
5 imposed on the customer by subsection {1} (3) the customer
6 is precluded from asserting against the bank:

7 (a) his the customer's unauthorized signature or any
8 alteration on the item if the bank also establishes that it
9 suffered a loss by reason of such failure; and

10 (b) an the customer's unauthorized signature or
11 alteration by the same wrongdoer on any other item paid in
12 good faith by the bank after-the-first-item-and-statement
13 was-available-to-the-customer-for-a--reasonable--period--not
14 exceeding--14--calendar--days--and--before-the-bank-receives
15 notification-from-the-customer-of-any-such if the payment
16 was made before the bank received notification from the
17 customer of the unauthorized signature or alteration and
18 after the customer had been afforded a reasonable period of
19 time in which to examine the item or statement of account
20 and notify the bank. "Reasonable period of time" is presumed
21 to be 14 calendar days after the item or statement pursuant
22 to subsection (1) was received by or made available to the
23 customer.

24 {3}{5} The --preclusion--under--subsection--{2}--does--not
25 apply--if If subsection (4) applies and the customer

1 establishes--lack-of proves that the bank failed to exercise
2 ordinary care on-the-part-of-the-bank in paying the item{s}
3 item and that the failure substantially contributed to loss,
4 the loss is allocated between the customer precluded and the
5 bank asserting the preclusion according to the extent to
6 which the failure of each to exercise ordinary care
7 contributed to the loss. If the customer proves that the
8 bank did not pay the item in good faith, the preclusion
9 under subsection (4) does not apply.

10 {4}{6} Without regard to care or lack of care of either
11 the customer or the bank a customer who does not within 1
12 year from the time the statement and or items are made
13 available to the customer (subsection (1)) discover and
14 report his the customer's unauthorized signature or any
15 alteration on--the--face--or--back--of-the-item-or--does--not
16 within-3-years--from--that--time--discover--and--report--any
17 unauthorized-endorsement is precluded from asserting against
18 the bank such unauthorized signature or endorsement--or--such
19 alteration. If there is a preclusion under this subsection,
20 the payor bank may not recover for breach of warranty under
21 [section 171] with respect to the unauthorized signature or
22 alteration to which the preclusion applies.

23 {5}--If--under--this--section--a--payor-bank-has-a-valid
24 defense-against-a-claim-of-a-customer-upon-or-resulting-from
25 payment-of-an-item-and--waives--or--fails--upon--request--to

~~assert--the--defense--the--bank--may--not--assert--against--any
collecting--bank--or--other--prior---party---presenting---or
transferring--the--item--a--claim--based--upon--the--unauthorized
signature--or--alteration--giving--rise--to--the--customer's
claim--"~~

Section 187. Section 30-4-407, MCA, is amended to read:

"30-4-407. Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker, after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(a)(1) of any holder in due course on the item against the drawer or maker; and

(b)(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c)(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose."

Section 188. Section 30-4-503, MCA, is amended to read:

"30-4-503. Responsibility of presenting bank for documents and goods -- report of reasons for dishonor --

referee in case of need. (1) Unless otherwise instructed and except as provided in ~~Chapter~~ chapter 5, a bank presenting a documentary draft:

(a) ~~must~~ shall deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize ~~his~~ the referee's services, it ~~must~~ shall use diligence and good faith to ascertain the reason for dishonor, ~~must~~ shall notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and ~~must~~ shall request instructions.

(2) ~~But-the~~ The presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for ~~such~~ those expenses."

NEW SECTION. **Section 189.** Short title. [Sections 189 through 226] may be cited as Uniform Commercial Code--Funds Transfers.

NEW SECTION. **Section 190.** Subject matter. Except as

otherwise provided in [section 196], [sections 189 through 226] apply to funds transfers defined in [section 192].

NEW SECTION. Section 191. Payment order --
 definitions. (1) In [sections 189 through 226], the following definitions apply:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or that otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank.

NEW SECTION. Section 192. Funds transfer --
 definitions. In [sections 189 through 226], the following definitions apply:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment

1 order in a funds transfer.

2 (4) "Originator's bank" means:

3 (a) the receiving bank to which the payment order of
4 the originator is issued if the originator is not a bank; or

5 (b) the originator if the originator is a bank.

6 NEW SECTION. Section 193. Other definitions. (1) In
7 [sections 189 through 226], the following definitions apply:

8 (a) "Authorized account" means a deposit account of a
9 customer in a bank designated by the customer as a source of
10 payment of payment orders issued by the customer to the
11 bank. If a customer does not so designate an account, any
12 account of the customer is an authorized account if payment
13 of a payment order from that account is not inconsistent
14 with a restriction on the use of that account.

15 (b) "Bank" means a person engaged in the business of
16 banking and includes a savings bank, savings and loan
17 association, credit union, and trust company. A branch or
18 separate office of a bank is a separate bank for purposes of
19 [sections 189 through 226].

20 (c) "Customer" means a person, including a bank, having
21 an account with a bank or from whom a bank has agreed to
22 receive payment orders.

23 (d) "Funds-transfer business day" of a receiving bank
24 means the part of a day during which the receiving bank is
25 open for the receipt, processing, and transmittal of payment

1 orders and cancellations and amendments of payment orders.

2 (e) "Funds-transfer system" means a wire transfer
3 network, automated clearinghouse, or other communication
4 system of a clearinghouse or other association of banks
5 through which a payment order by a bank may be transmitted
6 to the bank to which the order is addressed.

7 (f) "Good faith" means honesty in fact and the
8 observance of reasonable commercial standards of fair
9 dealing.

10 (g) "Prove", with respect to a fact, means to meet the
11 burden of establishing the fact (30-1-201(8)).

12 (2) Other definitions applying to [sections 189 through
13 226] and the sections in which they appear are:

14 "Acceptance" [section 205]

15 "Beneficiary" [section 191]

16 "Beneficiary's bank" [section 191]

17 "Executed" [section 209]

18 "Execution date" [section 209]

19 "Funds transfer" [section 192]

20 "Funds-transfer system rule" [section 220]

21 "Intermediary bank" [section 192]

22 "Originator" [section 192]

23 "Originator's bank" [section 192]

24 "Payment by beneficiary's bank to beneficiary" [section
25 218]

"Payment by originator to beneficiary" [section 219]

"Payment by sender to receiving bank" [section 216]

"Payment date" [section 214]

"Payment order" [section 191]

"Receiving bank" [section 191]

"Security procedure" [section 197]

"Sender" [section 191]

(3) The following definitions in chapter 4 apply to [sections 189 through 226]:

"Clearinghouse" 30-4-104

"Item" 30-4-104

"Suspends payments" 30-4-104

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

NEW SECTION. Section 194. Time payment order is received. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in 30-1-201(27). A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments or to different categories of payment orders, cancellations, or

amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If [sections 189 through 226] refer to an execution date or payment date or state a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in [sections 189 through 226].

NEW SECTION. Section 195. Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of [sections 189 through 226] to the extent of the inconsistency.

NEW SECTION. Section 196. Exclusion of consumer transactions governed by federal law. [Sections 189 through 226] do not apply to a funds transfer any part of which is

governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.) as amended from time to time.

NEW SECTION. Section 197. Security procedure.

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer or detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

NEW SECTION. Section 198. Authorized and verified payment orders. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the

receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders and the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is considered to be commercially reasonable if:

(a) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security

1 procedure that was commercially reasonable for that
2 customer; and

3 (b) the customer expressly agreed in writing to be
4 bound by any payment order, whether or not authorized,
5 issued in the customer's name and accepted by the bank in
6 compliance with the security procedure chosen by the
7 customer.

8 (4) The term "sender" in [sections 189 through 226]
9 includes the customer in whose name a payment order is
10 issued if the order is the authorized order of the customer
11 under subsection (1) or if it is effective as the order of
12 the customer under subsection (2).

13 (5) This section applies to amendments and
14 cancellations of payment orders to the same extent it
15 applies to payment orders.

16 (6) Except as provided in this section and in [section
17 199(1)(a)], rights and obligations arising under this
18 section or [section 199] may not be varied by agreement.

19 NEW SECTION. Section 199. Unenforceability of certain
20 verified payment orders. (1) If an accepted payment order is
21 not, under [section 198(1)], an authorized order of a
22 customer identified as sender, but is effective as an order
23 of the customer pursuant to [section 198(2)], the following
24 rules apply:

25 (a) By express written agreement, the receiving bank

1 may limit the extent to which it is entitled to enforce or
2 retain payment of the payment order.

3 (b) (i) The receiving bank is not entitled to enforce
4 or retain payment of the payment order if the customer
5 proves that the order was not caused, directly or
6 indirectly, by a person:

7 (A) entrusted at any time with duties to act for the
8 customer with respect to payment orders or the security
9 procedure; or

10 (B) who obtained access to transmitting facilities of
11 the customer or who obtained, from a source controlled by
12 the customer and without authority of the receiving bank,
13 information facilitating breach of the security procedure,
14 regardless of how the information was obtained or whether
15 the customer was at fault.

16 (ii) Information includes any access device, computer
17 software, or the like.

18 (2) This section applies to amendments of payment
19 orders to the same extent it applies to payment orders.

20 NEW SECTION. Section 200. Refund of payment and duty
21 of customer to report with respect to unauthorized payment
22 order. (1) If a receiving bank accepts a payment order
23 issued in the name of its customer as sender that is not
24 authorized and not effective as the order of the customer
25 under [section 198] or not enforceable, in whole or in part,

1 against the customer under [section 199], the bank shall
 2 refund any payment of the payment order received from the
 3 customer to the extent the bank is not entitled to enforce
 4 payment and shall pay interest on the refundable amount
 5 calculated from the date the bank received payment to the
 6 date of the refund. However, the customer is not entitled to
 7 interest from the bank on the amount to be refunded if the
 8 customer fails to exercise ordinary care to determine that
 9 the order was not authorized by the customer and to notify
 10 the bank of the relevant facts within a reasonable time not
 11 exceeding 90 days after the date the customer received
 12 notification from the bank that the order was accepted or
 13 that the customer's account was debited with respect to the
 14 order. The bank is not entitled to any recovery from the
 15 customer on account of a failure by the customer to give
 16 notification as stated in this section.

17 (2) Reasonable time under subsection (1) may be fixed
 18 by agreement as stated in 30-1-204(1), but the obligation of
 19 a receiving bank to refund payment as stated in subsection
 20 (1) may not otherwise be varied by agreement.

21 NEW SECTION. Section 201. Erroneous payment orders.

22 (1) If an accepted payment order was transmitted pursuant to
 23 a security procedure for the detection of error and the
 24 payment order erroneously instructed payment to a
 25 beneficiary not intended by the sender, erroneously

1 instructed payment in an amount greater than the amount
 2 intended by the sender, or was an erroneously transmitted
 3 duplicate of a payment order previously sent by the sender,
 4 the following rules apply:

5 (a) If the sender proves that the sender or a person
 6 acting on behalf of the sender pursuant to [section 202]
 7 complied with the security procedure and that the error
 8 would have been detected if the receiving bank had also
 9 complied, the sender is not obliged to pay the order to the
 10 extent stated in subsections (1)(b) and (1)(c).

11 (b) Except as provided in subsection (1)(c), if the
 12 funds transfer is completed on the basis of an erroneous
 13 payment order described in subsection (1), the sender is not
 14 obliged to pay the order and the receiving bank is entitled
 15 to recover from the beneficiary any amount paid to the
 16 beneficiary to the extent allowed by the law governing
 17 mistake and restitution.

18 (c) If the funds transfer is completed on the basis of
 19 a payment order erroneously instructing payment in an amount
 20 greater than the amount intended by the sender, as described
 21 in subsection (1), the sender is not obliged to pay the
 22 order to the extent the amount received by the beneficiary
 23 is greater than the amount intended by the sender. In that
 24 case, the receiving bank is entitled to recover from the
 25 beneficiary the excess amount received to the extent allowed

by the law governing mistake and restitution.

(2) If the sender of an erroneous payment order described in subsection (1) is not obliged to pay all or part of the order and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders.

NEW SECTION. Section 202. Transmission of payment

order through funds-transfer or other communication system.

(1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is considered to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a

discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

NEW SECTION. Section 203. Misdescription of

beneficiary. (1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the

1 name and number refer to the same person.

2 (b) If the beneficiary's bank pays the person
3 identified by name or knows that the name and number
4 identify different persons, no person has rights as
5 beneficiary except the person paid by the beneficiary's bank
6 if that person was entitled to receive payment from the
7 originator of the funds transfer. If no person has rights as
8 beneficiary, acceptance of the order cannot occur.

9 (3) If a payment order described in subsection (2) is
10 accepted, the originator's payment order described the
11 beneficiary inconsistently by name and number, and the
12 beneficiary's bank pays the person identified by number as
13 permitted by subsection (2)(a), the following rules apply:

14 (a) If the originator is a bank, the originator is
15 obliged to pay its order.

16 (b) If the originator is not a bank and proves that the
17 person identified by number was not entitled to receive
18 payment from the originator, the originator is not obliged
19 to pay its order unless the originator's bank proves that
20 the originator, before acceptance of the originator's order,
21 had notice that payment of a payment order issued by the
22 originator might be made by the beneficiary's bank on the
23 basis of an identifying or bank account number even if it
24 identifies a person different from the named beneficiary.
25 Proof of notice may be made by any admissible evidence. The

1 originator's bank satisfies the burden of proof if it proves
2 that the originator, before the payment order was accepted,
3 signed a writing stating the information to which the notice
4 relates.

5 (4) In a case governed by subsection (2)(a), if the
6 beneficiary's bank rightfully pays the person identified by
7 number and that person was not entitled to receive payment
8 from the originator, the amount paid may be recovered from
9 that person to the extent allowed by the law governing
10 mistake and restitution as follows:

11 (a) If the originator is obliged to pay its payment
12 order as stated in subsection (3), the originator has the
13 right to recover.

14 (b) If the originator is not a bank and is not obliged
15 to pay its payment order, the originator's bank has the
16 right to recover.

17 NEW SECTION. Section 204. Misdescription of
18 intermediary bank or beneficiary's bank. (1) This subsection
19 applies to a payment order identifying an intermediary bank
20 or the beneficiary's bank only by an identifying number as
21 follows:

22 (a) The receiving bank may rely on the number as the
23 proper identification of the intermediary or beneficiary's
24 bank and need not determine whether the number identifies a
25 bank.

1 (b) The sender is obliged to compensate the receiving
2 bank for any loss and expenses incurred by the receiving
3 bank as a result of its reliance on the number in executing
4 or attempting to execute the order.

5 (2) This subsection applies to a payment order
6 identifying an intermediary bank or the beneficiary's bank,
7 both by name and an identifying number, if the name and
8 number identify different persons as follows:

9 (a) If the sender is a bank, the receiving bank may
10 rely on the number as the proper identification of the
11 intermediary or beneficiary's bank if the receiving bank,
12 when it executes the sender's order, does not know that the
13 name and number identify different persons. The receiving
14 bank need not determine whether the name and number refer to
15 the same person or whether the number refers to a bank. The
16 sender is obliged to compensate the receiving bank for any
17 loss and expenses incurred by the receiving bank as a result
18 of its reliance on the number in executing or attempting to
19 execute the order.

20 (b) If the sender is not a bank and the receiving bank
21 proves that the sender, before the payment order was
22 accepted, had notice that the receiving bank might rely on
23 the number as the proper identification of the intermediary
24 or beneficiary's bank even if it identifies a person
25 different from the bank identified by name, the rights and

1 obligations of the sender and the receiving bank are
2 governed by subsection (2)(a), as though the sender were a
3 bank. Proof of notice may be made by any admissible
4 evidence. The receiving bank satisfies the burden of proof
5 if it proves that the sender, before the payment order was
6 accepted, signed a writing stating the information to which
7 the notice relates.

8 (c) Regardless of whether the sender is a bank, the
9 receiving bank may rely on the name as the proper
10 identification of the intermediary or beneficiary's bank if
11 the receiving bank, at the time it executes the sender's
12 order, does not know that the name and number identify
13 different persons. The receiving bank need not determine
14 whether the name and number refer to the same person.

15 (d) If the receiving bank knows that the name and
16 number identify different persons, reliance on either the
17 name or the number in executing the sender's payment order
18 is a breach of the obligation stated in [section 210(1)(a)].

19 NEW SECTION. Section 205. Acceptance of payment order.

20 (1) Subject to subsection (4), a receiving bank other than
21 the beneficiary's bank accepts a payment order when it
22 executes the order.

23 (2) Subject to subsections (3) and (4), a beneficiary's
24 bank accepts a payment order at the earliest of the
25 following times:

1 (a) when the bank:

2 (i) pays the beneficiary as stated in [section 218(1)

3 or (2)]; or

4 (ii) notifies the beneficiary of receipt of the order or

5 that the account of the beneficiary has been credited with

6 respect to the order unless the notice indicates that the

7 bank is rejecting the order or that funds with respect to

8 the order may not be withdrawn or used until receipt of

9 payment from the sender of the order;

10 (b) when the bank receives payment of the entire amount

11 of the sender's order pursuant to [section 216(1)(a) or

12 (1)(b)]; or

13 (c) the opening of the next funds-transfer business day

14 of the bank following the payment date of the order if, at

15 that time, the amount of the sender's order is fully covered

16 by a withdrawable credit balance in an authorized account of

17 the sender or if the bank has otherwise received full

18 payment from the sender, unless the order was rejected

19 before that time or is rejected within 1 hour after that

20 time or 1 hour after the opening of the next business day of

21 the sender following the payment date if that time is later.

22 If notice of rejection is received by the sender after the

23 payment date and the authorized account of the sender does

24 not bear interest, the bank is obliged to pay interest to

25 the sender on the amount of the order for the number of days

1 elapsing after the payment date to the day the sender

2 receives notice or learns that the order was not accepted,

3 counting that day as an elapsed day. If the withdrawable

4 credit balance during that period falls below the amount of

5 the order, the amount of interest payable is reduced

6 accordingly.

7 (3) Acceptance of a payment order cannot occur before

8 the order is received by the receiving bank. Acceptance does

9 not occur under subsection (2)(b) or (2)(c) if the

10 beneficiary of the payment order does not have an account

11 with the receiving bank, the account has been closed, or the

12 receiving bank is not permitted by law to receive credits

13 for the beneficiary's account.

14 (4) A payment order issued to the originator's bank

15 cannot be accepted until the payment date if the bank is the

16 beneficiary's bank or until the execution date if the bank

17 is not the beneficiary's bank. If the originator's bank

18 executes the originator's payment order before the execution

19 date or pays the beneficiary of the originator's payment

20 order before the payment date and the payment order is

21 subsequently canceled pursuant to [section 207(2)], the bank

22 may recover from the beneficiary any payment received to the

23 extent allowed by the law governing mistake and restitution.

24 NEW SECTION. **Section 206.** Rejection of payment order.

25 (1) A payment order is rejected by the receiving bank by a

1 notice of rejection transmitted to the sender orally,
 2 electronically, or in writing. A notice of rejection need
 3 not use any particular words and is sufficient if it
 4 indicates that the receiving bank is rejecting the order or
 5 will not execute or pay the order. Rejection is effective
 6 when the notice is given if transmission is by a means that
 7 is reasonable in the circumstances. If notice of rejection
 8 is given by a means that is not reasonable, rejection is
 9 effective when the notice is received. If an agreement of
 10 the sender and receiving bank establishes the means to be
 11 used to reject a payment order:

12 (a) any means complying with the agreement is
 13 reasonable; and

14 (b) any means not complying is not reasonable unless no
 15 significant delay in receipt of the notice resulted from the
 16 use of the noncomplying means.

17 (2) This subsection applies if a receiving bank other
 18 than the beneficiary's bank fails to execute a payment order
 19 despite the existence on the execution date of a
 20 withdrawable credit balance in an authorized account of the
 21 sender sufficient to cover the order. If the sender does not
 22 receive notice of rejection of the order on the execution
 23 date and the authorized account of the sender does not bear
 24 interest, the bank is obliged to pay interest to the sender
 25 on the amount of the order for the number of days elapsing

1 after the execution date to the earlier of the day the order
 2 is canceled pursuant to [section 207(4)] or the day the
 3 sender receives notice or learns that the order was not
 4 executed, counting the final day of the period as an elapsed
 5 day. If the withdrawable credit balance during that period
 6 falls below the amount of the order, the amount of interest
 7 is reduced accordingly.

8 (3) If a receiving bank suspends payments, all
 9 unaccepted payment orders issued to it are considered
 10 rejected at the time the bank suspends payments.

11 (4) Acceptance of a payment order precludes a later
 12 rejection of the order. Rejection of a payment order
 13 precludes a later acceptance of the order.

14 NEW SECTION. **Section 207. Cancellation and amendment**
 15 **of payment order.** (1) A communication of the sender of a
 16 payment order canceling or amending the order may be
 17 transmitted to the receiving bank orally, electronically, or
 18 in writing. If a security procedure is in effect between the
 19 sender and the receiving bank, the communication is not
 20 effective to cancel or amend the order unless the
 21 communication is verified pursuant to the security procedure
 22 or the bank agrees to the cancellation or amendment.

23 (2) Subject to subsection (1), a communication by the
 24 sender canceling or amending a payment order is effective to
 25 cancel or amend the order if notice of the communication is

1 received at a time and in a manner affording the receiving
2 bank a reasonable opportunity to act on the communication
3 before the bank accepts the payment order.

4 (3) After a payment order has been accepted,
5 cancellation or amendment of the order is not effective
6 unless the receiving bank agrees or a funds-transfer system
7 rule allows cancellation or amendment without agreement of
8 the bank as follows:

9 (a) With respect to a payment order accepted by a
10 receiving bank other than the beneficiary's bank,
11 cancellation or amendment is not effective unless a
12 conforming cancellation or amendment of the payment order
13 issued by the receiving bank is also made.

14 (b) (i) With respect to a payment order accepted by the
15 beneficiary's bank, cancellation or amendment is not
16 effective unless the order was issued in execution of an
17 unauthorized payment order or because of a mistake by a
18 sender in the funds transfer that resulted in the issuance
19 of a payment order:

20 (A) that is a duplicate of a payment order previously
21 issued by the sender;

22 (B) that orders payment to a beneficiary not entitled
23 to receive payment from the originator; or

24 (C) that orders payment in an amount greater than the
25 amount the beneficiary was entitled to receive from the

1 originator.

2 (ii) If the payment order is canceled or amended, the
3 beneficiary's bank is entitled to recover from the
4 beneficiary any amount paid to the beneficiary to the extent
5 allowed by the law governing mistake and restitution.

6 (4) An unaccepted payment order is canceled by
7 operation of law at the close of the fifth funds-transfer
8 business day of the receiving bank after the execution date
9 or payment date of the order.

10 (5) A canceled payment order cannot be accepted. If an
11 accepted payment order is canceled, the acceptance is
12 nullified and no person has any right or obligation based on
13 the acceptance. Amendment of a payment order is considered
14 to be cancellation of the original order at the time of
15 amendment and issue of a new payment order in the amended
16 form at the same time.

17 (6) Unless otherwise provided in an agreement of the
18 parties or in a funds-transfer system rule, if the receiving
19 bank, after accepting a payment order, agrees to
20 cancellation or amendment of the order by the sender or is
21 bound by a funds-transfer system rule allowing cancellation
22 or amendment without the bank's agreement, the sender,
23 whether or not cancellation or amendment is effective, is
24 liable to the bank for any loss and expenses, including
25 reasonable attorney fees, incurred by the bank as a result

1 of the cancellation or amendment or attempted cancellation
2 or amendment.

3 (7) A payment order is not revoked by the death or
4 legal incapacity of the sender unless the receiving bank
5 knows of the death or of an adjudication of incapacity by a
6 court of competent jurisdiction and has reasonable
7 opportunity to act before acceptance of the order.

8 (8) A funds-transfer system rule is not effective to
9 the extent it conflicts with subsection (3)(b).

10 NEW SECTION. Section 208. Liability and duty of
11 receiving bank regarding unaccepted payment order. If a
12 receiving bank fails to accept a payment order that it is
13 obliged by express agreement to accept, the bank is liable
14 for breach of the agreement to the extent provided in the
15 agreement or in [sections 189 through 226] but does not
16 otherwise have any duty to accept a payment order or, before
17 acceptance, to take any action or refrain from taking action
18 with respect to the order except as provided in [sections
19 189 through 226] or by express agreement. Liability based on
20 acceptance arises only when acceptance occurs as stated in
21 [section 205], and liability is limited to that provided in
22 [sections 189 through 226]. A receiving bank is not the
23 agent of the sender or beneficiary of the payment order it
24 accepts or of any other party to the funds transfer, and the
25 bank owes no duty to any party to the funds transfer except

1 as provided in [sections 189 through 226] or by express
2 agreement.

3 NEW SECTION. Section 209. Execution and execution
4 date. (1) A payment order is "executed" by the receiving
5 bank when it issues a payment order intended to carry out
6 the payment order received by the bank. A payment order
7 received by the beneficiary's bank may be accepted but
8 cannot be executed.

9 (2) "Execution date" of a payment order means the day
10 on which the receiving bank may properly issue a payment
11 order in execution of the sender's order. The execution date
12 may be determined by instruction of the sender but cannot be
13 earlier than the day the order is received and, unless
14 otherwise determined, is the day the order is received. If
15 the sender's instruction states a payment date, the
16 execution date is the payment date or an earlier date on
17 which execution is reasonably necessary to allow payment to
18 the beneficiary on the payment date.

19 NEW SECTION. Section 210. Obligations of receiving
20 bank in execution of payment order. (1) Except as provided
21 in subsections (2) through (4), if the receiving bank
22 accepts a payment order pursuant to [section 205(1)], the
23 bank has the following obligations in executing the order:

24 (a) (i) The receiving bank is obliged to issue, on the
25 execution date, a payment order complying with the sender's

1 order and to follow the sender's instructions concerning:

2 (A) any intermediary bank or funds-transfer system to
3 be used in carrying out the funds transfer; or

4 (B) the means by which payment orders are to be
5 transmitted in the funds transfer.

6 (ii) If the originator's bank issues a payment order to
7 an intermediary bank, the originator's bank is obliged to
8 instruct the intermediary bank according to the instruction
9 of the originator. An intermediary bank in the funds
10 transfer is similarly bound by an instruction given to it by
11 the sender of the payment order it accepts.

12 (b) If the sender's instruction states that the funds
13 transfer is to be carried out telephonically or by wire
14 transfer or otherwise indicates that the funds transfer is
15 to be carried out by the most expeditious means, the
16 receiving bank is obliged to transmit its payment order by
17 the most expeditious available means and to instruct any
18 intermediary bank accordingly. If a sender's instruction
19 states a payment date, the receiving bank is obliged to
20 transmit its payment order at a time and by means reasonably
21 necessary to allow payment to the beneficiary on the payment
22 date or as soon thereafter as is feasible.

23 (2) Unless otherwise instructed, a receiving bank
24 executing a payment order may use any funds-transfer system
25 if use of that system is reasonable in the circumstances and

1 issue a payment order to the beneficiary's bank or to an
2 intermediary bank through which a payment order conforming
3 to the sender's order can expeditiously be issued to the
4 beneficiary's bank if the receiving bank exercises ordinary
5 care in the selection of the intermediary bank. A receiving
6 bank is not required to follow an instruction of the sender
7 designating a funds-transfer system to be used in carrying
8 out the funds transfer if the receiving bank, in good faith,
9 determines that it is not feasible to follow the instruction
10 or that following the instruction would unduly delay
11 completion of the funds transfer.

12 (3) Unless subsection (1)(b) applies or the receiving
13 bank is otherwise instructed, the bank may execute a payment
14 order by transmitting its payment order by first class mail
15 or by any means reasonable in the circumstances. If the
16 receiving bank is instructed to execute the sender's order
17 by transmitting its payment order by a particular means, the
18 receiving bank may issue its payment order by the means
19 stated or by any means as expeditious as the means stated.

20 (4) Unless instructed by the sender:

21 (a) the receiving bank may not obtain payment of its
22 charges for services and expenses in connection with the
23 execution of the sender's order by issuing a payment order
24 in an amount equal to the amount of the sender's order less
25 the amount of the charges; and

(b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

NEW SECTION. Section 211. Erroneous execution of payment order. (1) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order or issues a payment order in execution of the sender's order and then issues a duplicate order is entitled to payment of the amount of the sender's order under [section 215(3)] if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under [section 215(3)] if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by

issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

NEW SECTION. Section 212. Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in [section 211] receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender.

1 If the sender fails to perform that duty, the bank is not
2 obliged to pay interest on any amount refundable to the
3 sender under [section 215(4)] for the period before the bank
4 learns of the execution error. The bank is not entitled to
5 any recovery from the sender on account of a failure by the
6 sender to perform the duty stated in this section.

7 NEW SECTION. Section 213. Liability for late or
8 improper execution or failure to execute payment order. (1)
9 If a funds transfer is completed but execution of a payment
10 order by the receiving bank in breach of [section 210]
11 results in delay in payment to the beneficiary, the bank is
12 obliged to pay interest to either the originator or the
13 beneficiary of the funds transfer for the period of delay
14 caused by the improper execution. Except as provided in
15 subsection (3), additional damages are not recoverable.

16 (2) If execution of a payment order by a receiving bank
17 in breach of [section 210] results in noncompletion of the
18 funds transfer, failure to use an intermediary bank
19 designated by the originator, or issuance of a payment order
20 that does not comply with the terms of the payment order of
21 the originator, the bank is liable to the originator for its
22 expenses in the funds transfer and for incidental expenses
23 and interest losses, to the extent not covered by subsection
24 (1), resulting from the improper execution. Except as
25 provided in subsection (3), additional damages are not

1 recoverable.

2 (3) In addition to the amounts payable under
3 subsections (1) and (2), damages, including consequential
4 damages, are recoverable to the extent provided in an
5 express written agreement of the receiving bank.

6 (4) If a receiving bank fails to execute a payment
7 order it was obliged by express agreement to execute, the
8 receiving bank is liable to the sender for its expenses in
9 the transaction and for incidental expenses and interest
10 losses resulting from the failure to execute. Additional
11 damages, including consequential damages, are recoverable to
12 the extent provided in an express written agreement of the
13 receiving bank but are not otherwise recoverable.

14 (5) Reasonable attorney fees are recoverable if demand
15 for compensation under subsection (1) or (2) is made and
16 refused before an action is brought on the claim. If a claim
17 is made for breach of an agreement under subsection (4) and
18 the agreement does not provide for damages, reasonable
19 attorney fees are recoverable if demand for compensation
20 under subsection (4) is made and refused before an action is
21 brought on the claim.

22 (6) Except as stated in this section, the liability of
23 a receiving bank under subsections (1) and (2) may not be
24 varied by agreement.

25 NEW SECTION. Section 214. Payment date. "Payment date"

of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

NEW SECTION. Section 215. Obligation of sender to pay receiving bank. (1) This section is subject to [sections 201 and 203].

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) and to [section 211]. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in [sections 200 and 212], interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in [section 210(1)(a)], to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

NEW SECTION. Section 216. Payment by sender to

receiving bank. (1) Payment of the sender's obligation under [section 215] to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender credited an account of the receiving bank with the sender or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the

sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under [section 215] will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank must be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1), the time when payment of the sender's obligation under [section 215(2) or (3)] occurs is governed by applicable principles of law that determine when an obligation is satisfied.

NEW SECTION. Section 217. Obligation of beneficiary's bank to pay and give notice to beneficiary. (1) Subject to

[sections 207(5) and 218(4) and (5)], if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is

obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (1) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

NEW SECTION. Section 218. Payment by beneficiary's

bank to beneficiary. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under [section 217(1)] occurs when and to the extent:

(a) the beneficiary is notified of the right to withdraw the credit;

(b) the bank lawfully applies the credit to a debt of the beneficiary; or

(c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under [section 217(1)] occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) (a) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if:

(i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated;

(ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule; and

(iii) the beneficiary's bank did not receive payment of

the payment order that it accepted.

(b) If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under [section 219].

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer:

(a) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance;

(b) the beneficiary's bank is entitled to recover payment from the beneficiary;

(c) no payment by the originator to the beneficiary occurs under [section 219]; and

(d) subject to [section 215(5)], each sender in the

1 funds transfer is excused from its obligation to pay its
2 payment order under [section 215(3)] because the funds
3 transfer has not been completed.

4 NEW SECTION. Section 219. Payment by originator to
5 beneficiary -- discharge of underlying obligation. (1)
6 Subject to [sections 207(5) and 218(4) and (5)], the
7 originator of a funds transfer pays the beneficiary of the
8 originator's payment order:

9 (a) at the time a payment order for the benefit of the
10 beneficiary is accepted by the beneficiary's bank in the
11 funds transfer; and

12 (b) in an amount equal to the amount of the order
13 accepted by the beneficiary's bank but not more than the
14 amount of the originator's order.

15 (2) (a) If payment under subsection (1) is made to
16 satisfy an obligation, the obligation is discharged to the
17 same extent discharge would result from payment to the
18 beneficiary of the same amount in money, unless:

19 (i) the payment under subsection (1) was made by a
20 means prohibited by the contract of the beneficiary with
21 respect to the obligation;

22 (ii) the beneficiary, within a reasonable time after
23 receiving notice of receipt of the order by the
24 beneficiary's bank, notified the originator of the
25 beneficiary's refusal of the payment;

1 (iii) funds with respect to the order were not withdrawn
2 by the beneficiary or applied to a debt of the beneficiary;
3 and

4 (iv) the beneficiary would suffer a loss that could
5 reasonably have been avoided if payment had been made by a
6 means complying with the contract.

7 (b) If payment by the originator does not result in
8 discharge under this section, the originator is subrogated
9 to the rights of the beneficiary to receive payment from the
10 beneficiary's bank under [section 217(1)].

11 (3) For the purpose of determining whether discharge of
12 an obligation occurs under subsection (2), if the
13 beneficiary's bank accepts a payment order in an amount
14 equal to the amount of the originator's payment order less
15 charges of one or more receiving banks in the funds
16 transfer, payment to the beneficiary is considered to be in
17 the amount of the originator's order unless upon demand by
18 the beneficiary the originator does not pay the beneficiary
19 the amount of the deducted charges.

20 (4) Rights of the originator or of the beneficiary of a
21 funds transfer under this section may be varied only by
22 agreement of the originator and the beneficiary.

23 NEW SECTION. Section 220. Variation by agreement and
24 effect of funds-transfer system rule. (1) Except as
25 otherwise provided in [sections 189 through 226], the rights

and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) (a) "Funds-transfer system rule" means a rule of an association of banks:

(i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders; or

(ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank.

(b) Except as otherwise provided in [sections 189 through 226], a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with [sections 189 through 226] and indirectly affects another party to the funds transfer that does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in [sections 217(3), 218(4), and 226(3)].

NEW SECTION. Section 221. Creditor process served on receiving bank -- setoff by beneficiary's bank. (1) As used in this section, "creditor process" means levy, attachment,

garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is considered to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and

1 in a manner affording the bank a reasonable opportunity to
2 act to prevent withdrawal.

3 (c) If creditor process with respect to the
4 beneficiary's account has been served and the bank has had a
5 reasonable opportunity to act on it, the bank may not reject
6 the payment order except for a reason unrelated to the
7 service of process.

8 (4) Creditor process with respect to a payment by the
9 originator to the beneficiary pursuant to a funds transfer
10 may be served only on the beneficiary's bank with respect to
11 the debt owed by that bank to the beneficiary. Any other
12 bank served with the creditor process is not obliged to act
13 with respect to the process.

14 NEW SECTION. Section 222. Injunction or restraining
15 order with respect to funds transfer. (1) For proper cause
16 and in compliance with applicable law, a court may restrain:

17 (a) a person from issuing a payment order to initiate a
18 funds transfer;

19 (b) an originator's bank from executing the payment
20 order of the originator; or

21 (c) the beneficiary's bank from releasing funds to the
22 beneficiary or the beneficiary from withdrawing the funds.

23 (2) A court may not otherwise restrain a person from
24 issuing a payment order, paying or receiving payment of a
25 payment order, or otherwise acting with respect to a funds

1 transfer.

2 NEW SECTION. Section 223. Order in which items and
3 payment orders may be charged to account -- order of
4 withdrawals from account. (1) If a receiving bank has
5 received more than one payment order of the sender or one or
6 more payment orders and other items that are payable from
7 the sender's account, the bank may charge the sender's
8 account with respect to the various orders and items in any
9 sequence.

10 (2) In determining whether a credit to an account has
11 been withdrawn by the holder of the account or applied to a
12 debt of the holder of the account, credits first made to the
13 account are first withdrawn or applied.

14 NEW SECTION. Section 224. Preclusion of objection to
15 debit of customer's account. If a receiving bank has
16 received payment from its customer with respect to a payment
17 order issued in the name of the customer as sender and
18 accepted by the bank and the customer received notification
19 reasonably identifying the order, the customer is precluded
20 from asserting that the bank is not entitled to retain the
21 payment unless the customer notifies the bank of the
22 customer's objection to the payment within 1 year after the
23 notification was received by the customer.

24 NEW SECTION. Section 225. Rate of Interest. (1) If,
25 under [sections 189 through 226], a receiving bank is

obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined:

(a) by agreement of the sender and receiving bank; or

(b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1), the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

NEW SECTION. Section 226. Choice of law. (1) The following rules apply unless the affected parties otherwise

agree or subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in subsection (1) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) (a) A funds-transfer system rule may select the law of a particular jurisdiction to govern:

(i) the rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or

(ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by

means of the system.

(b) A choice of law made pursuant to subsection (3)(a)(i) is binding on participating banks. A choice of law made pursuant to subsection (3)(a)(ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

Section 227. Section 30-6-101, MCA, is amended to read:

"30-6-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code--Bulk Transfers Sales."

Section 228. Section 30-6-102, MCA, is amended to read:

"30-6-102. "Bulk-transfer"----transfers-of-equipment---enterprises--subject--to--this--chapter-----bulk--transfers subject--to--this---chapter Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Assets" means the inventory that is the subject of a bulk sale and any tangible and intangible personal property used or held for use primarily in, or arising from, the seller's business and sold in connection with that inventory, but the term does not include:

(i) fixtures (30-9-313(1)(a)) other than readily removable factory and office machines;

(ii) the lessee's interest in a lease of real property;
or

(iii) property to the extent it is generally exempt from creditor process under nonbankruptcy law.

(b) "Auctioneer" means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.

(c) A-"bulk-transfer "Bulk sale" is-any-transfer-in-bulk and means:

(i) in the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the transferor's seller's business of a major part of the materials, supplies, merchandise or other more than half of the seller's inventory, {30-9-109}-of-an-enterprise--subject to--this--chapter as measured by value on the date of the bulk-sale agreement, if on that date the auctioneer or liquidator has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale or series of sales; and

(ii) in all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory, as measured by value on the date of the bulk-sale agreement, if on that date the buyer has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale.

{2}--A-transfer-of-a-substantial-part-of--the--equipment {30-9-109}-of-such-an-enterprise-is-a-bulk-transfer-if-it-is made--in--connection--with-a-bulk-transfer-of-inventory, but not otherwise.

{3}--The-enterprises-subject-to--this--chapter--are--all those--whose--principal--business-is-the-sale-of-merchandise

from-stock,including-those-who-manufacture-what-they-sell:

{4}--Except-as-limited-by-the-following-section-all-bulk transfers-of-goods-located-within-this-state-are-subject--to this-chapter.

(d) "Claim" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney fees only to the extent that the laws of this state permit the holder of the claim to recover them in an action against the obligor.

(e) "Claimant" means a person holding a claim incurred in the seller's business other than:

(i) an unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick leave pay;

(ii) a claim for injury to an individual or to property or for breach of warranty, unless:

(A) a right of action for the claim has accrued;

(B) the claim has been asserted against the seller;

(C) the seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it; and

(D) a claim for taxes owing to a governmental unit.

(f) "Creditor" means a claimant or other person holding a claim.

(g) (i) "Date of the bulk sale" means:

(A) if the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than 10% of the net proceeds is paid to or for the benefit of the seller; and

(B) in all other cases, the later of the date on which:

(I) more than 10% of the net contract price is paid to or for the benefit of the seller; or

(II) more than 10% of the assets, as measured by value, are transferred to the buyer.

(ii) For purposes of this subsection (1)(g):

(A) delivery of a negotiable instrument (30-3-104(1)) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto;

(B) to the extent that the contract price is deposited in an escrow, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier; and

(C) an asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights

to a tangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to use the asset.

(h) "Date of the bulk-sale agreement" means:

(i) in the case of a sale by auction or conducted by a liquidator (subsection (1)(c)(i)), the date on which the seller engages the auctioneer or liquidator; and

(ii) in all other cases, the date on which a bulk-sale agreement becomes enforceable between the buyer and the seller.

(i) "Debt" means liability on a claim.

(j) "Liquidator" means a person who is regularly engaged in the business of disposing of assets for businesses contemplating liquidation or dissolution.

(k) "Net contract price" means the new consideration the buyer is obligated to pay for the assets less:

(i) the amount of any proceeds of the sale of an asset to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(ii) the amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a

debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(1) "Net proceeds" means the new consideration received for assets sold at a sale by auction or a sale conducted by a liquidator on the seller's behalf less:

(i) commissions and reasonable expenses of the sale;

(ii) the amount of any proceeds of the sale of an asset to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(iii) the amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on

the date of the bulk sale.

(m) A sale is "in the ordinary course of the seller's business" if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

(n) "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(o) "Value" means fair market value.

(p) "Verified" means signed and sworn to or affirmed.

(2) The following definitions in other chapters apply to this chapter:

(a) "Buyer". 30-2-103(1)(a).

(b) "Equipment". 30-9-109(2).

(c) "Inventory". 30-9-109(4).

(d) "Sale". 30-2-106(1).

(e) "Seller". 30-2-103(1)(d).

(3) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 229. Section 30-6-103, MCA, is amended to read:

"30-6-103. Transfers--excepted--from-this Applicability of chapter. (1) The-following-transfers-are-not--subject--to Except as otherwise provided in subsection (3), this chapter applies to a bulk sale if:

1 (a) the seller's principal business is the sale of
2 inventory from stock; and

3 (b) on the date of the bulk-sale agreement, the seller
4 is located in this state or, if the seller is located in a
5 jurisdiction that is not a part of the United States, the
6 seller's major executive office in the United States is in
7 this state.

8 (2) A seller is considered to be located at the
9 seller's place of business. If a seller has more than one
10 place of business, the seller is considered located at the
11 seller's chief executive office.

12 (3) This chapter does not apply to:

13 {1}(a) Those-made-to-give-security-for-the a transfer
14 made to secure payment or performance of an obligation;

15 (b) a transfer of collateral to a secured party
16 pursuant to 30-9-503;

17 (c) a sale of collateral pursuant to 30-9-504;

18 (d) retention of collateral pursuant to 30-9-505;

19 (e) a sale of an asset encumbered by a security
20 interest or lien if:

21 (i) all the proceeds of the sale are applied in partial
22 or total satisfaction of the debt secured by the security
23 interest or lien; or

24 (ii) the security interest or lien is enforceable
25 against the asset after it has been sold to the buyer and

1 the net contract price is zero;

2 {2}(f) General-assignments a general assignment for the
3 benefit of all-the creditors of-the-transferor,-and or to a
4 subsequent transfers transfer by the assignee thereunder;

5 {3}--Transfers-in-settlement-or-realization-of-a-lien-or
6 other-security-interests;

7 {4}(g) Sales-by-executors,-administrators,-receivers,
8 trustees a sale by an executor, administrator, receiver,
9 trustee in bankruptcy, or any public officer under judicial
10 process;

11 {5}(h) Sales a sale made in the course of judicial or
12 administrative proceedings for the dissolution or
13 reorganization of a-corporation-and-of-which-notice-is-sent
14 to-the-creditors-of-the-corporation-pursuant-to-order-of-the
15 court-or-administrative-agency an organization;

16 {6}(i) Transfers-to-a-person-maintaining-a-known a sale
17 to a buyer whose principal place of business is in this
18 state the United States and who:

19 (i) not earlier than 21 days before the date of the
20 bulk sale:

21 (A) obtains from the seller a verified and dated list
22 of claimants of whom the seller has notice 3 days before the
23 seller sends or delivers the list to the buyer; or

24 (B) conducts a reasonable inquiry to discover the
25 claimants;

1 (ii) assumes in full the debts owed to claimants of whom
 2 the buyer has knowledge on the date the buyer receives the
 3 list of claimants from the seller or on the date the buyer
 4 completes the reasonable inquiry, as the case may be;

5 (iii) is not insolvent after the assumption; and

6 (iv) becomes-bound-to-pay-the-debts-of-the-transferor-in
 7 full--and gives public written notice of that fact--and who
 8 is-solvent-after-becoming-so-bound the assumption not later
 9 than 30 days after the date of the bulk sale by sending or
 10 delivering a notice to the claimants identified in
 11 subsection (3)(i)(ii) or by filing a notice in the office of
 12 the county clerk and recorder;

13 (j) a sale to a buyer whose principal place of business
 14 is in the United States and who:

15 (i) assumes in full the debts that were incurred in the
 16 seller's business before the date of the bulk sale;

17 (ii) is not insolvent after the assumption; and

18 (iii) gives written notice of the assumption not later
 19 than 30 days after the date of the bulk sale by sending or
 20 delivering a notice to each creditor whose debt is assumed
 21 or by filing a notice in the office of the county clerk and
 22 recorder;

23 (7)(k) A--transfer a sale to a new business-enterprise
 24 organization that is organized to take over and continue the
 25 business--if-public-notice-of-the-transaction-is--given--and

1 the--new-enterprise of the seller and that has its principal
 2 place of business in the United States if:

3 (i) the buyer assumes in full the debts of--the
 4 transferor--and--he that were incurred in the seller's
 5 business before the date of the bulk sale;

6 (ii) the seller receives nothing from the transaction
 7 sale except an interest in the new enterprise--junior
 8 organization that is subordinate to the claims of--creditors
 9 against the organization arising from the assumption; and

10 (iii) the buyer gives written notice of the assumption
 11 not later than 30 days after the date of the bulk sale by
 12 sending or delivering a notice to each creditor whose debt
 13 is assumed or by filing a notice in the office of the county
 14 clerk and recorder;

15 (8)--Transfers--of--property--which--is--exempt--from
 16 execution--

17 (1) a sale of assets having:

18 (i) a value, net of liens and security interests, of
 19 less than \$10,000. If a debt is secured by assets and other
 20 property of the seller, the net value of the assets is
 21 determined by subtracting from their value an amount equal
 22 to the product of the debt multiplied by a fraction, the
 23 numerator of which is the value of the assets on the date of
 24 the bulk sale and the denominator of which is the value of
 25 all property securing the debt on the date of the bulk sale;

1 or

2 (ii) a value of more than \$25 million on the date of the
3 bulk-sale agreement; or

4 (m) a sale required by and made pursuant to statute.

5 (4) Public The notice under subsection (6)--or
6 subsection-(7)--may-be-given-by-publishing-once-a-week-for--2
7 consecutive--weeks--in--a--newspaper--of-general-circulation
8 where-the-transferor-had-its-principal-place-of-business--in
9 this-state-an-advertisement-including (3)(i)(iv) must state:

10 (a) that a sale that may constitute a bulk sale has
11 been or will be made;

12 (b) the date or prospective date of the bulk sale;

13 (c) the individual, partnership, or corporate the names
14 and addresses of the transferor--and--transferee--and--the
15 effective-date-of-the-transfer seller and buyer;

16 (d) the address to which inquiries about the sale may
17 be made, if different from the seller's address; and

18 (e) that the buyer has assumed or will assume in full
19 the debts owed to claimants of whom the buyer has knowledge
20 on the date the buyer receives the list of claimants from
21 the seller or completes a reasonable inquiry to discover the
22 claimants.

23 (5) The notice under subsection (3)(j)(iii) and
24 (3)(k)(iii) must state:

25 (a) that a sale that may constitute a bulk sale has

1 been or will be made;

2 (b) the date or prospective date of the bulk sale;

3 (c) the individual, partnership, or corporate names and
4 the addresses of the seller and buyer;

5 (d) the address to which inquiries about the sale may
6 be made, if different from the seller's address; and

7 (e) that the buyer has assumed or will assume the debts
8 that were incurred in the seller's business before the date
9 of the bulk sale.

10 (6) For purposes of subsection (3)(1), the value of
11 assets is presumed to be equal to the price the buyer agrees
12 to pay for the assets. However, in a sale by auction or a
13 sale conducted by a liquidator on the seller's behalf, the
14 value of assets is presumed to be the amount the auctioneer
15 or liquidator reasonably estimates the assets will bring at
16 auction or upon liquidation."

17 **Section 230.** Section 30-6-104, MCA, is amended to read:

18 "30-6-104. Schedule--of--property--list--of--creditors
19 Obligations of buyer. (1) Except-as-provided-with-respect-to
20 auction-sales-(30-6-100)--a-bulk-transfer--subject--to--this
21 chapter---is---ineffective---against--any--creditor--of--the
22 transferor--unless In a bulk sale, as defined in
23 30-6-102(1)(c)(ii), the buyer shall:

24 (a) the--transferee--requires-the-transferor-to-furnish
25 obtain from the seller a list of his--existing--creditors

1 prepared--as--stated--in--this--section all business names and
 2 addresses used by the seller within 3 years before the date
 3 the list is sent or delivered to the buyer; and

4 (b) unless excused under subsection (2), obtain from
 5 the seller a verified and dated list of claimants of whom
 6 the seller has notice 3 days before the seller sends or
 7 delivers the list to the buyer and including, to the extent
 8 known by the seller, the address of and the amount claimed
 9 by each claimant;

10 (b)(c) the parties obtain from the seller or prepare a
 11 schedule of the property transferred sufficient to identify
 12 it distribution (30-6-106(1)); and

13 (d) give notice of the bulk sale in accordance with
 14 30-6-105;

15 (e) unless excused under 30-6-106(4), distribute the
 16 net contract price in accordance with the undertakings of
 17 the buyer in the schedule of distribution; and

18 (c)(f) the transferee preserves unless excused under
 19 subsection (2), make available the list of claimants
 20 (subsection (1)(b)) by:

21 (i) promptly sending or delivering a copy of the list
 22 without charge to any claimant whose written request is
 23 received by the buyer no later than and schedule for 6
 24 months next following the transfer and after the date of the
 25 bulk sale;

1 (ii) permits inspection of either or both and copying
 2 therefrom at all permitting any claimant to inspect and copy
 3 the list at any reasonable hours by any creditor of the
 4 transferor, hour upon request received by the buyer no later
 5 than 6 months after the date of the bulk sale; or

6 (iii) files filing a copy of the list and schedule in
 7 the office of the county clerk and recorder of the county of
 8 residence of the transferor, seller and also in the office
 9 of the county clerk and recorder of the county in which the
 10 property transferred is located at the time of transfer no
 11 later than the time for giving notice of the bulk sale
 12 (30-6-105(5)). A list filed in accordance with this
 13 subsection must state the individual, partnership, or
 14 corporate name and a mailing address of the seller.

15 (2) The list of creditors must be signed and sworn to
 16 or affirmed by the transferor or his agent. It must contain
 17 the names and business addresses of all creditors of the
 18 transferor, with the amounts when known, and also the names
 19 of all persons who are known to the transferor to assert
 20 claims against him even though such claims are disputed. If
 21 the transferor is the obligor of an outstanding issue of
 22 bonds, debentures or the like as to which there is an
 23 indenture trustee, the list of creditors need include only
 24 the name and address of the indenture trustee and the
 25 aggregate outstanding principal amount of the issue. A buyer

1 who gives notice in accordance with 30-6-105(2) is excused
 2 from complying with the requirements of subsections (1)(b)
 3 and (1)(f).

4 ~~{3}--Responsibility-for-the-completeness-and-accuracy-of~~
 5 ~~the--list--of--creditors--rests--on--the-transferor, and the~~
 6 ~~transfer-is-not-rendered-ineffective-by-errors-or--omissions~~
 7 ~~therein---unless---the--transferee--is--shown--to--have--had~~
 8 ~~knowledge."~~

9 **Section 231.** Section 30-6-105, MCA, is amended to read:

10 "30-6-105. Notice to creditors claimants. (1) In
 11 addition--to--the-requirements-of-the-preceding-section, any
 12 bulk-transfer-subject-to-this-chapter--except--one--made--by
 13 auction--sale--{30-6-108}--is-ineffective-against-any-creditor
 14 of-the-transferor-unless-at-least-10-days--before--he--takes
 15 possession--of-the-goods-or-pays-for-them, whichever happens
 16 first, the transferee gives Except as otherwise provided in
 17 subsection (2), to comply with 30-6-104(1)(d), the buyer
 18 shall send or deliver a written notice of the transfer--in
 19 the--manner-and-to-the-persons-hereafter-provided--{30-6-107}
 20 bulk sale to each claimant on the list of claimants
 21 (30-6-104(1)(b)) and to any other claimant of whom the buyer
 22 has knowledge at the time the notice of the bulk sale is
 23 sent or delivered.

24 (2) A buyer may comply with 30-6-104(1)(d) by filing a
 25 written notice of the bulk sale in the office of the county

1 clerk and recorder if:

2 (a) on the date of the bulk-sale agreement, the seller
 3 has 200 or more claimants, exclusive of claimants holding
 4 secured or matured claims for employment compensation and
 5 benefits, including commissions and vacation, severance, and
 6 sick leave pay; or

7 (b) the buyer has received a verified statement from
 8 the seller stating that, as of the date of the bulk-sale
 9 agreement, the number of claimants, exclusive of claimants
 10 holding secured or matured claims for employment
 11 compensation and benefits, including commissions and
 12 vacation, severance, and sick leave pay, is 200 or more.

13 (3) The written notice of the bulk sale must be
 14 accompanied by a copy of the schedule of distribution
 15 (30-6-106(1)) and state at least:

16 (a) that the seller and buyer have entered into an
 17 agreement for a sale that may constitute a bulk sale under
 18 the laws of Montana;

19 (b) the date of the agreement;

20 (c) the date on or after which more than 10% of the
 21 assets were or will be transferred;

22 (d) the date on or after which more than 10% of the net
 23 contract price was or will be paid if the date is not stated
 24 in the schedule of distribution;

25 (e) the name and a mailing address of the seller;

1 (f) any other business name and address listed by the
2 seller pursuant to 30-6-104(1)(a);

3 (g) the name of the buyer and an address of the buyer
4 from which information concerning the sale can be obtained;

5 (h) a statement indicating the type of assets or
6 describing the assets item by item;

7 (i) the manner in which the buyer will make available
8 the list of claimants (30-6-104(1)(f)), if applicable; and

9 (j) if the sale is in total or partial satisfaction of
10 an antecedent debt owed by the seller, the amount of the
11 debt to be satisfied and the name of the person to whom it
12 is owed.

13 (4) For purposes of subsections (3)(e) and (3)(g), the
14 name of a person is the person's individual, partnership, or
15 corporate name.

16 (5) The buyer shall give notice of the bulk sale not
17 less than 45 days before the date of the bulk sale and, if
18 the buyer gives notice in accordance with subsection (1),
19 not more than 30 days after obtaining the list of claimants.

20 (6) A written notice substantially complying with the
21 requirements of subsection (3) is effective even though it
22 contains minor errors that are not seriously misleading.

23 (7) A form substantially as follows is sufficient to
24 comply with subsection (3):

25 Notice of Sale

1 (1) _____, whose address is
2 _____, is described in this notice as the
3 "seller".

4 (2) _____, whose address is
5 _____, is described in this notice as the
6 "buyer".

7 (3) The seller has disclosed to the buyer that within
8 the past 3 years the seller has used other business names,
9 operated at other addresses, or both, as follows:
10 _____.

11 (4) The seller and the buyer have entered into an
12 agreement dated _____ for a sale that may constitute
13 a bulk sale under the laws of the state of Montana.

14 (5) The date on or after which more than 10% of the
15 assets that are the subject of the sale were or will be
16 transferred is _____, and (if not stated in the
17 schedule of distribution) the date on or after which more
18 than 10% of the net contract price was or will be paid is
19 _____.

20 (6) The following assets are the subject of the sale:
21 _____.

22 (7) [If applicable] The buyer will make available to
23 claimants of the seller a list of the seller's claimants in
24 the following manner: _____.

25 (8) [If applicable] The sale is to satisfy

1 \$ _____ of an antecedent debt owed by the seller to
 2 _____.

3 (9) A copy of the schedule of distribution of the net
 4 contract price accompanies this notice."

5 **Section 232.** Section 30-6-106, MCA, is amended to read:

6 "30-6-106. Application--of--the--proceeds Schedule of
 7 distribution. In-addition-to-the--requirements--of--the--two
 8 preceding-sections:

9 (1) Upon--every--bulk--transfer-subject-to-this-chapter
 10 for-which-new-consideration--becomes--payable--except--those
 11 made--by-sale-at-auction-it-is-the-duty-of-the-transferee-to
 12 assure--that--such--consideration--is--applied--so--far--as
 13 necessary--to--pay--those--debts-of-the-transferor-which-are
 14 either--shown--on--the--list--furnished--by--the--transferor
 15 {30-6-104}-or-filed-in-writing-in-the-place--stated--in--the
 16 notice--{30-6-107}--within-30-days-after-the-mailing-of-such
 17 notice.-This-duty-of-the-transferee-runs-to-all-the--holders
 18 of--such--debts,-and-may-be-enforced-by-any-of-them-for-the
 19 benefit-of-all; The seller and buyer shall agree on how the
 20 net contract price is to be distributed and set forth their
 21 agreement in a written schedule of distribution.

22 (2) If-any-of-said-debts-are-in-dispute--the--necessary
 23 sum-may-be-withheld-from-distribution-until-the-dispute-is
 24 settled-or-adjudicated; The schedule of distribution may
 25 provide for distribution to any person at any time,

1 including distribution of the entire net contract price to
 2 the seller.

3 (3) If--the--consideration-payable-is-not-enough-to-pay
 4 all-of-the-said-debts-in-full-distribution-shall-be-made-pro
 5 rata; The buyer's undertakings in the schedule of
 6 distribution run only to the seller. However, a buyer who
 7 fails to distribute the net contract price in accordance
 8 with the buyer's undertakings in the schedule of
 9 distribution is liable to a creditor only as provided in
 10 30-6-107(1).

11 (4) The--transferee--may--within-10-days-after-he-takes
 12 possession-of-the--goods--pay--the--consideration--into--the
 13 district--court--in--the-county-where-the-transferor-had-its
 14 principal-place-of-business-in-this-state-and-thereafter-may
 15 discharge-his-duty-under-this-section-by--giving--notice--by
 16 registered--or-certified-mail-to-all-the-persons-to-whom-the
 17 duty-runs-that-the-consideration-has--been--paid--into--that
 18 court--and--that--they--should--file--their-claims-there; On
 19 motion-of-any-interested-party,-the--court--may--order--the
 20 distribution-of-the-consideration-to-the-persons-entitled-to
 21 it; If the buyer undertakes in the schedule of distribution
 22 to distribute any part of the net contract price to a person
 23 other than the seller and, after the buyer has given notice
 24 in accordance with 30-6-105, some or all of the anticipated
 25 net contract price is or becomes unavailable for

distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the buyer is excused from any obligation arising under this chapter or under any contract with the seller to distribute the net contract price in accordance with the buyer's undertakings in the schedule if the buyer:

(a) distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;

(b) distributes the net contract price remaining available in accordance with an order of court;

(c) commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or

(d) reaches a new agreement with the seller for distribution of the net contract price remaining available, sets forth the new agreement in an amended schedule of distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the buyer's undertakings in the amended schedule.

(5) The notice under subsection (4)(d) must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with subsection (1) or (2) of 30-6-105, whichever is applicable, at least 14 days before the buyer distributes any part of the net contract price remaining available.

(6) If the seller undertakes in the schedule of distribution to distribute any part of the net contract price and, after the buyer has given notice in accordance with 30-6-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the seller and any person in control of the seller are excused from any agreement with the buyer to distribute the net contract price in accordance with the seller's undertakings in the schedule if the seller:

(a) distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;

(b) distributes the net contract price remaining

1 available in accordance with an order of court;

2 (c) commences a proceeding for interpleader in a court
3 of competent jurisdiction and is discharged from the
4 proceeding; or

5 (d) prepares a written amended schedule of distribution
6 of the net contract price remaining available for
7 distribution, gives notice of the amended schedule, and
8 distributes the net contract price remaining available in
9 accordance with the amended schedule.

10 (7) The notice under subsection (6)(d) must identify
11 the buyer and the seller, state the filing number, if any,
12 of the original notice, set forth the amended schedule, and
13 be given in accordance with subsection (1) or (2) of
14 30-6-105, whichever is applicable, at least 14 days before
15 the seller distributes any part of the net contract price
16 remaining available."

17 **Section 233.** Section 30-6-107, MCA, is amended to read:

18 "30-6-107. The notice Liability for noncompliance. (1)

19 The notice to creditors (30-6-105) shall state:

20 (a) that a bulk transfer is about to be made; and

21 (b) the names and business addresses of the transferor
22 and transferee; and all other business names and addresses
23 used by the transferor within 3 years last past so far as
24 known to the transferee; and

25 (c) whether or not all the debts of the transferor are

1 to be paid in full as they fall due as a result of the
2 transaction; and if so, the address to which creditors
3 should send their bills;

4 (2) if the debts of the transferor are not to be paid
5 in full as they fall due or if the transferee is in doubt on
6 that point then the notice shall state further:

7 (a) the location and general description of the
8 property to be transferred and the estimated total of the
9 transferor's debts;

10 (b) the address where the schedule of property and list
11 of creditors (30-6-104) may be inspected;

12 (c) whether the transfer is to pay existing debts and
13 if so the amount of such debts and to whom owing;

14 (d) whether the transfer is for new consideration and
15 if so the amount of such consideration and the time and
16 place of payment; and

17 (e) if for new consideration the time and place where
18 creditors of the transferor are to file their claims;

19 (3) The notice in any case shall be delivered
20 personally or sent by registered or certified mail to all
21 the persons shown on the list of creditors furnished by the
22 transferor (30-6-104) and to all other persons who are known
23 to the transferee to hold or assert claims against the
24 transferor. (1) Except as provided in subsection (3), and
25 subject to the limitation in subsection (4):

1 (a) a buyer who fails to comply with the requirements
2 of 30-6-104(1)(e) with respect to a creditor is liable to
3 the creditor for damages in the amount of the claim, reduced
4 by any amount that the creditor would not have realized if
5 the buyer had complied; and
6 (b) a buyer who fails to comply with the requirements
7 of any other subsection of 30-6-104 with respect to a
8 claimant is liable to the claimant for damages in the amount
9 of the claim, reduced by any amount that the claimant would
10 not have realized if the buyer had complied.
11 (2) In an action under subsection (1), the creditor has
12 the burden of establishing the validity and amount of the
13 claim and the buyer has the burden of establishing the
14 amount that the creditor would not have realized if the
15 buyer had complied.
16 (3) A buyer who made a good faith and commercially
17 reasonable effort to comply with the requirements of
18 30-6-104(1) or to exclude the sale from the application of
19 this chapter under 30-6-103(3) or who on or after the date
20 of the bulk-sale agreement, but before the date of the bulk
21 sale, held a good faith and commercially reasonable belief
22 that this chapter does not apply to the particular sale is
23 not liable to creditors for failure to comply with the
24 requirements of 30-6-104. The buyer has the burden of
25 establishing the good faith and commercial reasonableness of

1 the effort or belief.
2 (4) In a single bulk sale, the cumulative liability of
3 the buyer for failure to comply with the requirements of
4 30-6-104(1) may not exceed an amount equal to:
5 (a) if the assets consist only of inventory and
6 equipment, twice the net contract price less the amount of
7 any part of the net contract price paid to or applied for
8 the benefit of the seller or a creditor; or
9 (b) if the assets include property other than inventory
10 and equipment, twice the net value of the inventory and
11 equipment less the amount of the portion of any part of the
12 net contract price paid to or applied for the benefit of the
13 seller or a creditor that is allocable to the inventory and
14 equipment.
15 (5) For the purposes of subsection (4)(b), the "net
16 value" of an asset is the value of the asset less the amount
17 of any proceeds of the sale of an asset, to the extent the
18 proceeds are applied in partial or total satisfaction of a
19 debt secured by the asset, and the amount of any debt to the
20 extent it is secured by a security interest or lien that is
21 enforceable against the asset before and after it has been
22 sold to a buyer. If a debt is secured by an asset and other
23 property of the seller, the amount of the debt secured by a
24 security interest or lien that is enforceable against the
25 asset is determined by multiplying the debt by a fraction,

the numerator of which is the value of the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale. The portion of a part of the net contract price paid to or applied for the benefit of the seller or a creditor that is "allocable to the inventory and equipment" is the portion that bears the same ratio to that part of the net contract price as the net value of the inventory and equipment bears to the net value of all of the assets.

(6) A payment made by the buyer to a person to whom the buyer is, or believes he is, liable under subsection (1) reduces pro tanto the buyer's cumulative liability under subsection (4).

(7) No action may be brought under subsection (1)(b) by or on behalf of a claimant whose claim is unliquidated or contingent.

(8) A buyer's failure to comply with the requirements of 30-6-104(1) does not:

(a) impair the buyer's rights in or title to the assets;

(b) render the sale ineffective, void, or voidable;

(c) entitle a creditor to more than a single satisfaction of his claim; or

(d) create liability other than as provided in this chapter.

(9) Payment of the buyer's liability under subsection (1) discharges pro tanto the seller's debt to the creditor.

(10) Unless otherwise agreed, a buyer has an immediate right of reimbursement from the seller for any amount paid to a creditor in partial or total satisfaction of the buyer's liability under subsection (1).

(11) If the seller is an organization, a person who is in direct or indirect control of the seller and who knowingly, intentionally, and without legal justification fails, or causes the seller to fail, to distribute the net contract price in accordance with the schedule of distribution is liable to any creditor to whom the seller undertook to make payment under the schedule for damages caused by the failure."

Section 234. Section 30-6-108, MCA, is amended to read:

"30-6-108. Auction-sales----"auctioneer" Bulk sales by auction -- bulk sales conducted by liquidator. (1) A Sections 30-6-104 through 30-6-107 apply to a bulk transfer is-subject-to-this-chapter-even-though-it-is-by sale at by auction,--but--only--in--the--manner--and and a bulk sale conducted by a liquidator on the seller's behalf with the results-stated-in-this-section following modifications:

(a) "Buyer" refers to an auctioneer or a liquidator, as the case may be.

(b) "Net contract price" refers to net proceeds of the

1 auction or net proceeds of the sale, as the case may be.

2 (c) The written notice required under 30-6-105(3) must
3 be accompanied by a copy of the schedule of distribution
4 (30-6-106(1)) and state at least:

5 (i) that the seller and the auctioneer or liquidator
6 have entered into an agreement for auction or liquidation
7 services that may constitute an agreement to make a bulk
8 sale under the laws of Montana;

9 (ii) the date of the agreement;

10 (iii) the date on or after which the auction began or
11 will begin or the date on or after which the liquidator
12 began or will begin to sell assets on the seller's behalf;

13 (iv) the date on or after which more than 10% of the net
14 proceeds of the sale were or will be paid if the date is not
15 stated in the schedule of distribution;

16 (v) the name and a mailing address of the seller;

17 (vi) any other business name and address listed by the
18 seller pursuant to 30-6-104(1)(a);

19 (vii) the name of the auctioneer or liquidator and an
20 address of the auctioneer or liquidator from whom
21 information concerning the sale can be obtained;

22 (viii) a statement indicating the type of assets or
23 describing the assets item by item;

24 (ix) the manner in which the auctioneer or liquidator
25 will make available the list of claimants (30-6-104(1)(f)).

1 if applicable; and

2 (x) if the sale is in total or partial satisfaction of
3 an antecedent debt owed by the seller, the amount of the
4 debt to be satisfied and the name of the person to whom it
5 is owed.

6 (d) In a single bulk sale, the cumulative liability of
7 the auctioneer or liquidator for failure to comply with the
8 requirements of this section may not exceed the amount of
9 the net proceeds of the sale allocable to inventory and
10 equipment sold less the amount of the portion of any part of
11 the net proceeds paid to or applied for the benefit of a
12 creditor that is allocable to the inventory and equipment.¹

13 (2) The---transferor---shall---furnish---a---list---of---his
14 creditors---and---assist---in---the---preparation---of---a---schedule---of---the
15 property---to---be---sold;---both---prepared---as---before---stated
16 (30-6-104); A payment made by the auctioneer or liquidator
17 to a person to whom the auctioneer or liquidator is, or
18 believes he is, liable under this section reduces pro tanto
19 the auctioneer's or liquidator's cumulative liability under
20 subsection (1)(d).

21 (3) The---person---or---persons---other---than---the---transferor---who
22 direct;---control---or---are---responsible---for---the---auction---are
23 collectively---called---the---"auctioneer";---The---auctioneer---shall:
24 (a)---receive---and---retain---the---list---of---creditors---and
25 prepare---and---retain---the---schedule---of---property---for---the---period

stated in this chapter {30-6-104};

{b}--give---notice--of--the--auction--personally--or--by
registered-or-certified-mail-at-least--10--days--before--it
occurs--to--all--persons--shown--on--the--list--of--creditors--and--to
all--other--persons--who--are--known--to--him--to--hold--or--assert
claims--against--the--transferor;--and

{c}--assure--that--the--net--proceeds--of--the--auction--are
applied--as--provided--in--this--chapter--{30-6-106}; A form
substantially as follows is sufficient to comply with
subsection (1)(c):

Notice of Sale

(1) _____, whose address is
_____, is described in this notice as the
"seller".

(2) _____, whose address is
_____, is described in this notice as the
"auctioneer" or "liquidator".

(3) The seller has disclosed to the auctioneer or
liquidator that within the past 3 years the seller has used
other business names, operated at other addresses, or both,
as follows: _____.

(4) The seller and the auctioneer or liquidator have
entered into an agreement dated _____ for auction or
liquidation services that may constitute an agreement to
make a bulk sale under the laws of the state of Montana.

(5) The date on or after which the auction began or
will begin or the date on or after which the liquidator
began or will begin to sell assets on the seller's behalf is
_____, and [if not stated in the schedule of
distribution] the date on or after which more than 10% of
the net proceeds of the sale were or will be paid
is _____.

(6) The following assets are the subject of the sale:
_____.

(7) [If applicable] The auctioneer or liquidator will
make available to claimants of the seller a list of the
seller's claimants in the following manner:
_____.

(8) [If applicable] The sale is to satisfy
\$ _____ of an antecedent debt owed by the seller to
_____.

(9) A copy of the schedule of distribution of the net
proceeds accompanies this notice.

(4) Failure A person who buys at a bulk sale conducted
by an auctioneer or a liquidator need not comply with the
requirements of 30-6-104(1) and is not liable for the
failure of the auctioneer or liquidator to perform any of
these duties does not affect the validity of the sale or the
title of the purchasers; but if the auctioneer knows that
the auction constitutes a bulk transfer such failure renders

~~the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction; if the auctioneer consists of several persons their liability is joint and several~~ comply with the requirements of this section."

NEW SECTION. Section 235. What constitutes filing -- duties of filing officer -- information from filing officer.

(1) Presentation of a notice or list of claimants for filing and tender of the filing fee or acceptance of the notice or list by the filing officer constitutes filing under this chapter.

(2) The filing officer shall:

(a) mark each notice or list with a file number and with the date and hour of filing;

(b) hold the notice or list or a copy for public inspection;

(c) index the notice or list according to each name given for the seller and for the buyer; and

(d) note in the index the file number and the addresses of the seller and buyer given in the notice or list.

(3) If the person filing a notice or list furnishes the filing officer with a copy, the filing officer upon request shall note upon the copy the file number and date and hour of the filing of the original and send or deliver the copy

to the person.

(4) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing is 50 cents for the first page and 25 cents for each additional page. The fee for indexing each name more than two is \$2.

(5) Upon request of any person, the filing officer shall issue a certificate showing whether any notice or list with respect to a particular seller or buyer is on file on the date and hour stated in the certificate. If a notice or list is on file, the certificate must give the date and hour of filing of each notice or list and the name and address of each seller, buyer, auctioneer, or liquidator. The fee for the certificate is \$2 if the request for the certificate is in the standard form prescribed by the county clerk and recorder and otherwise is \$5. Upon request of any person, the filing officer shall furnish a copy of any filed notice or list for a fee of 50 cents.

(6) The filing officer shall keep each notice or list for 2 years after it is filed.

Section 236. Section 30-6-111, MCA, is amended to read:

"30-6-111. Limitation of actions and--revies. (1) No Except as provided in subsection (2), an action under this chapter against a buyer, auctioneer, or liquidator shall--be **brought--nor--levy made more than 6 months must be commenced**

1 within 1 year after the date on which the transferee took
2 possession of the goods unless the transfer has been
3 concealed of the bulk sale.

4 (2) (a) If the transfer has been concealed, actions may
5 be brought or levies made within 6 months after its
6 discovery buyer, auctioneer, or liquidator conceals the fact
7 that the sale has occurred, the limitation is tolled and an
8 action under this chapter may be commenced within the
9 earlier of:

10 (i) 1 year after the person bringing the action
11 discovers that the sale has occurred; or

12 (ii) 1 year after the person bringing the action should
13 have discovered that the sale has occurred, but no later
14 than 2 years after the date of the bulk sale.

15 (b) Complete noncompliance with the requirements of
16 this chapter does not of itself constitute concealment.

17 (3) An action under 30-6-107(11) must be commenced
18 within 1 year after the alleged violation occurs."

19 **Section 237.** Section 30-9-113, MCA, is amended to read:

20 **"30-9-113.** Security interests arising under chapter on
21 sales or under chapter on leases. A security interest
22 arising solely under the chapter on sales (chapter 2) or
23 [sections 7 through 86] on leases ([sections 7 through 86])
24 is subject to the provisions of this chapter except that to
25 the extent that and so long as the debtor does not have or

1 does not lawfully obtain possession of the goods:

2 (a)(1) no security agreement is necessary to make the
3 security interest enforceable; and

4 (b)(2) no filing is required to perfect the security
5 interest; and

6 (c)(3) the rights of the secured party on default by
7 the debtor are governed;

8 (a) by the chapter on sales (chapter 2) in the case of
9 a security interest arising solely under that chapter; or

10 (b) by [sections 7 through 86] on leases ([sections 7
11 through 86]) in the case of a security interest arising
12 solely under [sections 7 through 86]."

13 **Section 238.** Section 27-1-717, MCA, is amended to read:

14 **"27-1-717.** Issuing a bad check or stopping payment --
15 civil liability. (1) A person who issues a check, draft, or
16 an order for the payment of money is liable for damages in a
17 civil action as provided in subsection (2) to the person to
18 whom the check, draft, or order is issued if the check,
19 draft, or order is:

20 (a) dishonored for lack of funds or credit or because
21 the issuer has no account with the drawee; or

22 (b) issued in partial or complete fulfillment of a
23 valid and legally binding obligation and the issuer stops
24 payment with the intent to fraudulently defeat a possessory
25 lien or otherwise defraud the payee of the check.

(2) The amount of damages awarded pursuant to subsection (1) shall be an amount equal to the greater of \$100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than \$500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the engagement obligation of the drawer provided for in 30-3-413 [section 137] to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions

of this section apply."

NEW SECTION. Section 239. Repealer. Sections 30-3-103,

30-3-106, 30-3-110, 30-3-112, 30-3-113, 30-3-116, 30-3-117, 30-3-118, 30-3-120, 30-3-121, 30-3-123, 30-3-201, 30-3-206, 30-3-207, 30-3-402, 30-3-408, 30-3-411, 30-3-416, 30-3-418, 30-3-501, 30-3-502, 30-3-503, 30-3-505, 30-3-506, 30-3-507, 30-3-509, 30-3-511, 30-3-602, 30-3-606, 30-3-701, 30-3-801, 30-3-802, 30-3-803, 30-3-804, 30-3-805, 30-4-109, 30-6-109, 30-6-110, 30-9-111, 70-1-601, 70-1-602, 70-1-603, 70-1-604, 70-1-605, 70-1-606, 70-1-607, 70-1-608, 70-1-609, 70-1-610, 70-1-611, 70-8-101, 70-8-102, 70-8-103, and 70-8-104, MCA, are repealed.

NEW SECTION. Section 240. Codification instructions.

(1) [Sections 7 through 86] are intended to be codified as an integral part of Title 30, chapters 1 through 9, and the provisions of Title 30, chapters 1 through 9, apply to [sections 7 through 86].

(2) [Sections 88, 91, 97 through 99, 101, 103, 106, 108, 109, 120, 122 through 124, 129, 135, 137, 138, 142, 143, 146, 148, and 154] are intended to be codified as an integral part of Title 30, chapter 3, and the provisions of Title 30, chapter 3, apply to [sections 88, 91, 97 through 99, 101, 103, 106, 108, 109, 120, 122 through 124, 129, 135, 137, 138, 142, 143, 146, 148, and 154].

(3) [Sections 159, 162, 163, 171, and 172] are intended

1 to be codified as an integral part of Title 30, chapter 4,
2 and the provisions of Title 30, chapter 4, apply to
3 [sections 159, 162, 163, 171, and 172].

4 (4) [Sections 189 through 226] are intended to be
5 codified as an integral part of Title 30, chapters 1 through
6 9, and the provisions of Title 30, chapters 1 through 9,
7 apply to [sections 189 through 226].

8 (5) [Section 235] is intended to be codified as an
9 integral part of Title 30, chapter 6, and the provisions of
10 Title 30, chapter 6, apply to [section 235].

11 NEW SECTION. **Section 241.** **Saving clause.** [This act]
12 does not affect rights and duties that matured, penalties
13 that were incurred, or proceedings that were begun before
14 [the effective date of this act].

-End-

legislative sessions, if necessary. He added that he does not know where federal standards are going right now.

Senator Towe advised Kathy Anderson that he did not believe any federal funds would be at risk because of SB 31.

Senator Towe stated he believed Mr. Fitzpatrick was actually addressing Steve Browning's new bill. He stated he was only trying to make certain that testing is accurate, adding that right now, there is a 20 percent chance that a test will read positive whether the person being tested has been using or not.

Chairman Pinsoneault stated the Committee would take concerns with Steve Browning's bill under advisement.

HEARING ON SENATE BILL 1

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, District 23, said SB 1 has 331 pages, 241 sections, and is a modernization of the Uniform Commercial Code (UCC). He advised the Committee that a national conference of attorneys, law professors, legislators, and judges works to establish areas of uniformity among the states. Senator Mazurek explained that the conference has been in existence for 99 years, and encompassed all of the states by 1912.

Senator Mazurek stated the UCC governs commercial transactions in all states of the union, and said that since 1951 the commercial transaction field has changed dramatically.

Senator Mazurek explained that SB 1 adopts changes in four areas: Article 2A (sections 7-86) dealing with leases; Article 4A (sections 189-226) dealing with electronic fund transfers; Article 3 modernizing to keep up with technology in check handling; and Article 6 dealing with bulk transfer. Senator Mazurek said the national conference began to address leases in 1986, that there is currently no state law dealing with electronic fund transfers, and urged the Committee to consider dealing with bulk transfers (inventory of businesses). Senator Mazurek commented that the American Law Institute has suggested repeal for bulk transfer (Exhibits #7a, 7b, 7c, 7d).

Senator Mazurek advised the Committee he did not gather witnesses for this hearing, and asked if they would leave an hour open during executive session, if necessary, to receive additional information.

Proponents' Testimony:

Bob Pyfer, Montana Credit Unions League, commented on national level input in SB 1. He said Article 4 is very complicated and that he sees it as something the Committee must deal with. Mr.

Pyfer asked the Committee not to give the bill an immediate effective date.

Opponents' Testimony:

There were no opponents of SB 1.

Questions From Committee Members:

Senator Halligan asked about the elimination of bulk transfers. Senator Mazurek replied that they simply wouldn't have to be dealt with, and added that bulk transfer is not often breached in Montana.

Senator Towe asked if there anything to protect purchasers in Article 4. Senator Mazurek replied that it would ultimately be protection for purchasers. Senator Towe asked Staff Attorney, Valencia Lane, to check on this.

Senator Towe asked if leasing were generally accepted. Senator Mazurek replied that California, New York, and Massachusetts have considered leasing and it appears to be generally accepted.

Chairman Pinsoneault advised the Committee that executive action would be held off for time to look into these matters.

Closing by Sponsor:

Senator Mazurek waived closing.

HEARING ON SENATE BILL 6

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, District 23, provided the Committee with written testimony on SB 6 (Exhibit #8). He explained that he was uncertain how to interpret the 1990 amendment to the Uniform Statutory Rule against Perpetuities Act, except that the bill was designed to correct a problem arising after the Act was passed in 1989.

Senator Mazurek did state that SB 6 was an attempt to carry out the original intent of the 1989 Act, to make the intentions of trust valid.

Proponents' Testimony:

John Cadby, Montana Bankers Association, stated there are four trust companies in Montana who looked at the bill and believe it is great.

Why states should adopt Article 4A of the UCC

New Article 4A of the Uniform Commercial Code concerns a type of payment made through the banking system called a "funds transfer." (A popular term for the bulk of these kinds of transfers is "wholesale wire transfer." This term is not used in Article 4A because all "funds transfers" are not "wholesale" and not "wire" transfers.) A "funds transfer" is, generally, a large, rapid money transfer between commercial entities. In the average "funds transfer" \$5,000,000.00 changes hands. In most instances, such transfers will occur between banks using computers and electronic communications. (Consumer transfers through credit cards and ATM machines are not governed by Article 4A, but are governed by federal law.) Article 4A provides a body of law on the rights and obligations connected with "funds transfers."

There is currently no comprehensive body of law that defines the rights and obligations that arise from "funds transfers." Some aspects of "funds transfers" are governed by rules of the principal transfer systems. Transfers made by the Federal Reserve network (Fedwire) are governed by Federal Reserve Regulation J and transfers over the Clearing House Interbank Payment System (CHIPS) are governed by CHIPS rules. But these rules apply to only limited aspects of "funds transfer" transactions.

Article 4A will provide:

CERTAINTY

Currently, no participant in a "funds transfer" can know with certainty what the rights and obligations of parties are. Enactment of Article 4A solves the problem.

BALANCE

Article 4A carefully addresses the interests of banks, commercial users of this payment method and the public. It seeks a fair balance between interests involved in "funds transfers."

REMEDIES

What law exists does not provide clear remedies for "funds transfers" when something goes wrong. UCC-4A establishes who takes the risk of loss, who will be liable and what will be the damages.

551
16 Jan
EX 7B

Benefits of Revised UCC Article 3

(With Miscellaneous and Conforming Amendments to Articles 1 and 4)

RRevised Article 3 to the Uniform Commercial Code (UCC), with conforming amendments to Articles 4 and 1, constitutes a companion to Article 4A. Both are needed to update the provisions of the UCC to provide essential rules for the new technologies and practices in payment systems since the UCC was promulgated nearly four decades ago. In 1990 the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) approved revisions to Articles 3 and 4, and they are now offered for enactment in the various states.

When the UCC was first promulgated, three billion checks were handled annually. Currently, over 50 billion checks are processed annually. To handle the increased load with greater reliability, computer and other technologies — such as the MICR line — have made the much needed faster processing possible.

In addition, the Expedited Funds Availability Act of 1987 requires banks to clear checks and to make funds more quickly available. This, too, has accelerated the need for automation and speed in the processing of checks.

* The present Articles 3 and 4, written for a paper based system, cannot adequately address issues of responsibility and liability for the new technologies now employed and the procedures required by the Expedited Funds Availability Act and the Regulation CC. While agreements among parties to particular transactions have long provided some relief, such stop gap measures are no longer adequate.

Revised Article 3 is necessary to update, improve and maintain the viability of Articles 3 and 4. Absent such an update, further Federal preemption of state law is even more likely to occur.

Benefits in the Public Interest

Certainty — Revised Articles 3 and 4 remove numerous uncertainties that exist in the current provisions.

Speed and Reliability — The revisions remove encumbrances to use of new technologies of automation, and better conform to Regulation CC to expedite the availability of funds to customers and reduce risks to banks.

Lowers Costs — By providing for the new technologies, lower costs are possible to banks and thus to their customers.

Reduced Litigation — By clarification of troublesome issues — and by the provisions of Sections 3-404 through 3-406, which reform rules for allocation of loss from forgeries and alterations — the revisions should significantly reduce litigation.

pose. Both kinds of implied warranty are directly derived from the Article 2 of the UCC. The warranty of merchantability operates between merchants, and assures the resalability of goods. The fitness warranty presumes a purpose and reliance upon the lessor to supply goods fit for the purpose. Both kinds of implied warranties can be excluded or modified by agreement.

Implied warranties of quality (and against infringement) by lessors do not similarly apply to finance leases. UCC - 2A instead passes any implied warranties of the supplier-seller to the lessor-buyer under Article 2, to the lessee under a finance lease. The finance lessor does not directly make such warranties.

3 Effect of a Lease Contract

Generally, a lessee's rights under a lease contract or the residual rights of a lessor are freely transferable, unless the contract prohibits the transfer or unless transfer risks the other party's contract rights. An assignment, so-called, of lease rights is treated as any transfer is, and is presumed to transfer both rights and obligation, unless otherwise specified in the agreement.

If a subsequent lease is entered when there is an existing lease, the subsequent lease is subject to the prior lease. However, a subsequent "lessee in the ordinary course of business," who deals with a lessor who is a merchant dealing in goods of the kind leased and to whom the goods are entrusted under the prior lease, will take goods free of the prior, existing lease contract.

Another third party issue dealt with in Part 3 of UCC - 2A is lien priorities. Here, UCC - 2A becomes analogous to provisions in UCC, Article 9. A statutory materialmen's lien has priority over any interest in a lease contract, unless other law sets a different priority. Otherwise, lessee's

creditors take subject to the lease contract. Lessor's creditors with prior interests to those arising under a lease contract, generally, take priority over interests arising under the contract.

However, a "lessee in the ordinary course of business" takes free of any prior perfected security interests, unless the lessee has specific knowledge of their existence. A prior interest of a lessee takes priority over a subsequent interest of a lessor's creditor. But there are special instances in which a creditor of a lessor has priority over a lessee's interest, even though the lease interest is prior in time. Included are instances in which depriving the creditor of possession of the collateral would be fraudulent to the creditor "under any statute or rule of law."

Goods that become fixtures present priority problems when leased. Fixtures are defined as goods "so related to particular real estate that an interest in them arises under real estate law." Who has priority between the lessor and those holding the real-estate interests?

Generally, if goods are leased and become fixtures, the lessor with prior interest in them has priority over those with the real estate interests - if the lessor perfects his or her prior interest with a fixture filing under Article 9 of the UCC. A fixture filing is made by placing an appropriate financing statement in the real estate records. There are instances in which a lessor can retain an interest against the real estate holder without filing, but a fixture filing will generally be essential.

"Accessions" also present a special problem. An "accession" occurs when leased goods "are installed in or affixed to other goods." Any existing rights in a lease contract are superior to any rights in the whole in which leased goods become accession after the lease contract is entered. If the lease contract arises at the time goods be-

come accessions or after, earlier interests in the whole have priority. If someone purchases the whole after a lease contract, rights under the lease contract take priority over the purchaser's rights. However, a "buyer in the ordinary course of business," or a prior creditor who makes advances without knowledge of the lease contract, takes priority over a lessor or lessee, even though the lease contract precedes the purchase or advance in time.

④ Performance of a Lease Contract

Part 4 of UCC - 2A deals with performance and repudiation of a contract, with substituted performance and with excused performance. If performance is to be impaired, however, UCC - 2A gives contracting parties the latitude to minimize losses.

For example, a party to a lease contract who has reasonable grounds for insecurity as to the performance of the other party, may demand written assurance of performance. Until written assurance is provided, the demanding party may suspend his or her performance. If assurance is not given in a reasonable time, the contract may be treated as repudiated.

When performance is impaired without the fault of either party, because of such events as failure of an agreed means of transport, a commercially reasonable substitute must be accepted. There are instances in which performance may be excused: "If performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was basic assumption on which the lease contract was made." The lessor must notify the lessee (and the supplier if there is a finance lease) of delay or non-delivery. These are examples of the options open to contracting parties.

⑤ Default

Upon default, UCC - 2A provides remedies in Part 5, including damages and equitable remedies, such as specific performance. UCC - 2A permits cover. That is, a party may seek goods from another source to limit losses. Mitigation of damages is encouraged. The general measure of any damage is actual loss.

Lease Transactions as Secured Transactions

The last issue of importance addressed in UCC - 2A is an added appendix, consisting of a crucial amendment to Section 1-201(37) of the UCC, which defines the term security interest. If a lease involves a "security interest," it is subject to Article 9 of the UCC. A lease involves a security interest, dependent upon four alternative factors or characteristics.

If the term of the lease is equal or greater than the remaining economic life of the goods; if there is a renewal option for no additional consideration or nominal consideration; if there is mandatory renewal or the lessee becomes owner at the end of the lease term; or if the lessee has the option to purchase at the end of the lease term for no additional consideration, or any combination of these factors, the lease would tend to be treated as creating a security interest and would be subject to Article 9.

Conclusion

UCC - 2A is comprehensive, dealing with every phase of leasing transactions. It draws a great share of its concepts from Article 2 of the UCC, but it is adapted to the peculiarities of the leasing form. It is an important advance in commercial law.

-- A Summary --

Article 2A of the Uniform Commercial Code (UCC), when it was promulgated in 1987, marked the first addition to the UCC since its original promulgation in 1951. The subject of this new addition is Leasing, confined to the leasing of personal property. Most of the UCC is comprised of earlier uniform acts that were promulgated by the Uniform Law Commissioners between 1896 and 1947. Each article had a substantial legal and legislative history before it was brought into the UCC.

UCC 2A did not have the advantage of so much history. Leasing as a means of financing the acquisition of capital goods is a phenomenon of roughly the 20 years just preceding the promulgation of UCC 2A. Therefore, the Uniform Law Commissioners (ULC) and the American Law Institute, its partner in the UCC, were moving into new territory, entirely, in the promulgation of this new article. To form an appropriate bridge between the familiar and the new, the drafters of UCC 2A modeled the new article on the tried and familiar principles of UCC Article 2, the Sales article. But inevitably, an effort to move into a new subject is an effort with some risks.

UCC 2A had its initial consideration in the California and Oklahoma legislatures. In California, it was subjected to an extensive study by the California Bar, and the scrutiny of others with interests in the area of leasing law. The result was a series of amendments to the act. Because of the large interest in this new piece of legislation, nationally, the California amendments were circulated throughout the country. There were more bar association studies, a symposium in the Alabama Law Review, and finally, a review

by the New York Law Revision Commission. Two things emerged from all this intense scrutiny: (1) The initial decision to follow the principles of UCC Article 2 was fundamentally the correct decision and the basic structure of UCC Article 2A is sound; and (2) Some issues needed to be readdressed by amendment.

The ULC was gratified by the first conclusion that universally arose from that scrutiny. It was not particularly surprised at the second. This is entirely new legislation. That further scrutiny might find some issues to address is a logical expectation. So the ULC has proceeded to address these very few issues with amendments in 1990.

Most of the amendments proposed in 1990 are meant to clarify specific provisions of the act or to readjust them in fairly minor ways. There are three significant issues that are addressed. The three issues addressed involve the definition of a finance lease, the power to restrict assignments in a lease contract, and the character of remedies in the event a lease contract is breached.

A finance lease is a lease in which the lessor does not supply the goods that are leased. The lessor acts as a financier for the acquisition of those goods. Under the original UCC 2A, a lease was not a finance lease unless the lessee received a copy of the contract between the lessor and the supplier of the goods evidencing the acquisition of the goods, or unless the lease contract conditioned its effectiveness upon the lessee's approval of the purchase contract between the lessor and the supplier of the goods. In many leasing situations, which involve finance leasing, the lessor cannot comply with these requirements, thereby losing the attributes

Senate Judiciary COMMITTEE

BILL NO. SB 1

DATE 16 Jan 91

SPONSOR Mazurek

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Senator Svrcek referred to testimony by Peter Funk, Office of the Attorney General, on January 21, 1991, and said he believes the language addressing costs (page 3) needs to be cleaned up.

Senator Yellowtail stated he would work on cleaning up the bill.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

There was none.

EXECUTIVE ACTION ON SENATE BILL 1

Motion:

Senator Mazurek made a motion that the amendments prepared by Valencia Lane (Exhibit #4) be approved.

Discussion:

There was none.

Amendments, Discussion, and Votes:

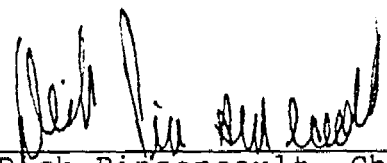
The motion made by Senator Mazurek carried unanimously.

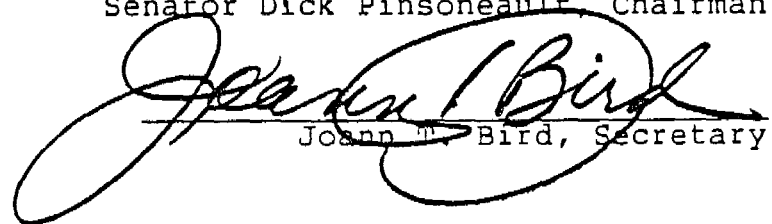
Recommendation and Vote:

Senator Svrcek made a motion that SB 1 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 11:20 a.m.


Senator Dick Pinsonneault, Chairman


Joann M. Bird, Secretary

and clarification of money orders as checks rather than bank obligations.

"Ordinary Care" — In Sections 3-103(a)(7) and 4-104(c) ordinary care is defined, making clear that financial institutions taking checks for processing or for payment by automated means need not manually handle each instrument if that is consistent with the institutions's procedures and the procedures used do not vary unreasonably from general usage of banks. This clarification is designed to accommodate and facilitate efficiency, thus lowering costs and lowering expedited funds availability risks. The definition of ordinary care relates to those specific instances in the Code where the standard of ordinary care is set forth.

Statute of Limitations — Sections 3-118 and 4-111 include statutory periods of limitations which will make the law uniform rather than leaving the topic to widely varying state laws.

Employee Fraud — Section 3-405 expands a *per se* negligence rule to the case of an indorsement forged by an employee. It also covers that of a faithless employee who supplies a name and then forges the indorsement, but does not require a precise match between the name of the payee and the indorsement.

Bank Definition — The definition of bank is expanded for the purposes of Articles 3 and 4 to clearly include savings and loans and credit unions so that their checks are directly governed by the Code. Section 4-104 clarifies that checks drawn on credit lines are subject to the rules for checks drawn on deposit accounts.

Truncation — Section 4-110 authorizes electronic presentment of items and related provisions remove impediments to truncation. Truncation will reduce risks from mandated funds availability and improve the check collection process. Section 4-406 allows an institution the benefit of its provisions even though it does not return the checks due to truncation. If both the customer and the institution fail to use ordinary care, a comparative negligence standard is used rather than placing the full loss on the institution.

WHY STATES SHOULD ADOPT ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE – LEASES

The leasing of large scale items ranging from oil-drilling platforms to automobiles is big business in this country, with an estimated dollar volume reaching \$150 billion. Yet the laws governing leasing have not kept pace with the intricacies of today's leasing arrangements, resulting in considerable uncertainty for lessors and lessees alike.

To fill this gap, the Uniform Law Commissioners approved a new amendment to the Uniform Commercial Code: Article 2A – Leases. UCC-2A provides for the fundamentals of the leasing contract, including the formation of the contract, provisions for express and implied warranties, and damages for breach of a leasing contract.

Historically, we have thought of financed purchase transactions as conditional sales. As sales, such transactions fall under the UCC, particularly Articles 2 and 9. But a leasing transaction, even though very similar to a conditional sale in many ways, is not clearly subject to the UCC. The rights and remedies of the lessor and lessee, therefore, are not well defined, and courts have characterized these transactions differently from jurisdiction to jurisdiction. Many troubling issues have been extensively and confusingly litigated.

UCC-2A gives leasing transactions an appropriate underpinning in the law. Because of the broad similarities between lease and sales transactions, that underpinning is largely derived from the sales article of the UCC – Article 2. Hence the new article is 2A, indicating its relationship to Article 2. Article 2 has been adopted in every state except Louisiana.

There are a number of reasons all states should adopt UCC – Article 2A, Leases:

① LEASES SHOULD BE A PART OF THE UCC

Since leases are an important part of business and commercial law, they should be governed by the Uniform Commercial Code. Further, the leasing business is interstate in character. Uniformity is as important to the conduct of leasing transactions as it is to sales transactions.

② LEASES AS SECURED TRANSACTIONS

Perhaps the most important question answered in UCC-2A is when leases are subject to UCC-Article 9 on "Secured Transactions." Certain lease contracts establish what effectively are conditional sales, in which the lessor is no different from a creditor subject to Article 9.

The prior law has never effectively dealt with the issue, and concrete standards are established in UCC-2A and an accompanying amendment to UCC-1-

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

58#1

DATE

3-12-91

SPONSOR(S)

Sen. Mazurek

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Bobblyfer	MT Credit Union League	1		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Why states should adopt Article 4A of the UCC

New Article 4A of the Uniform Commercial Code concerns a type of payment made through the banking system called a "funds transfer." (A popular term for the bulk of these kinds of transfers is "wholesale wire transfer." This term is not used in Article 4A because all "funds transfers" are not "wholesale" and not "wire" transfers.) A "funds transfer" is, generally, a large, rapid money transfer between commercial entities. In the average "funds transfer" \$5,000,000.00 changes hands. In most instances, such transfers will occur between banks using computers and electronic communications. (Consumer transfers through credit cards and ATM machines are not governed by Article 4A, but are governed by federal law.) Article 4A provides a body of law on the rights and obligations connected with "funds transfers."

There is currently no comprehensive body of law that defines the rights and obligations that arise from "funds transfers." Some aspects of "funds transfers" are governed by rules of the principal transfer systems. Transfers made by the Federal Reserve network (Fedwire) are governed by Federal Reserve Regulation J and transfers over the Clearing House Interbank Payment System (CHIPS) are governed by CHIPS rules. But these rules apply to only limited aspects of "funds transfer" transactions.

Article 4A will provide:

CERTAINTY

Currently, no participant in a "funds transfer" can know with certainty what the rights and obligations of parties are. Enactment of Article 4A solves the problem.

BALANCE

Article 4A carefully addresses the interests of banks, commercial users of this payment method and the public. It seeks a fair balance between interests involved in "funds transfers."

REMEDIES

What law exists does not provide clear remedies for "funds transfers" when something goes wrong. UCC 4A establishes who takes the risk of loss, who will be liable and what will be the damages.

UNIFORM COMMERCIAL CODE,

ARTICLE 2A – LEASES

– A Summary –

The Uniform Commercial Code (UCC) Article 2A – Leases, governs true leases of goods. In a true lease, the lessor gives possession and right to use the goods to the lessee for a fixed period of time in return for rent. The title to the property and a meaningful residual interest remain with the lessor.

A "finance lease" is a true lease in which the lessor is not the fundamental supplier of the goods leased, but leases goods to lessees as a means of financing their acquisition. UCC – 2A governs "finance leases" as well as other true leases, but "finance leases" are treated differently from other true leases in certain respects. The principal differences in treatment will be discussed in subsequent paragraphs of this summary.

UCC – 2A is largely derived from the sales article of the UCC – Article 2. It provides basic contract rules, including matters of offer and acceptance, statutes of frauds, warranties, assignment of interests, and remedies upon breach of contract. There are five parts to the UCC – 2A: (1) General Provisions, (2) Formation and Construction of a Lease Contract, (3) Effect of a Lease Contract, (4) Performance of a Lease Contract, and (5) Default.

1 General Provisions

The General Provisions include the large, general definitions section and general rules pertaining to the construction of leasing contracts, including conflict of law provisions, choice of forum rules, and inter-

pretation of remedies. Most of these provisions are drawn from Article 2 of the UCC.

UCC – 2A creates an entity called the "lessee in the ordinary course of business." The definition parallels the "buyer in the ordinary course of business" in the UCC. Both take property free of prior encumbrances, under the appropriate conditions, and are essential to commercial enterprise.

UCC – 2A also defines "supplier" as "a person from whom a lessor buys or leases goods to be leased under a finance lease." This definition is important because goods in a "finance lease" must come from another source than a lessor.

2 Formation and Construction of a Lease Contract

In a sale transaction, the UCC provides warranties of title and against infringement by any claims of another person. There are similar warranties in UCC – 2A, although title is not protected, since title remains in the lessor. But the lessor does warrant the lessee's enjoyment of the leasehold interest against "a claim to or interest in the goods that arose from an act or omission of the lessor." This warranty applies to all lease contracts. Infringement, however, is not warranted against in finance leases, and this warranty only binds a merchant-lessor; who deals regularly in goods of the kind.

Implied warranties are of two kinds, merchantability and fitness for a particular pur-

201(37), which is a basic definition section in the UCC. Under these provisions, a secured transaction occurs when the lessor has no meaningful residual rights in goods when the lease expires. In a true lease, the rights to the goods revert to the lessor when the lease term ends. But if the contract terms indicate that the rights to this residue are valueless, then it can be inferred that the lease really amounted to a conditional sale of the goods. Article 9 then should and would apply.

③ FINANCE LEASES

UCC-2A creates a separate category of leases called "finance leases" to eliminate existing confusion over the rights of parties in such leases. Finance leases are characterized by the unique position of the lessor — as purchaser of goods only for the purpose of delivering them to a lessee pursuant to a lease contract.

Because the lessor is not the real supplier of the goods, and acts merely to finance the goods in the hands of the lessee, certain of lessee's rights are best served by imposing obligations on the real supplier and by limiting some rights against the lessor. UCC-2A does not give a lessee implied warranties against a lessor in a finance lease, but passes the lessor's warranties against the real supplier under Article 2 on the lessee.

UCC-2A also further limits a lessee's already limited rights to reject goods, once accepted under the contract, or to cancel, terminate, modify, excuse or substitute performance under the lease contract. The lessee relies upon warranty rights against the supplier, and the lessor is treated as the financing entity it really is.

④ REMEDIES

Prior law does not provide clear remedies for leasing transactions. Because the parties to lease contracts share substantial characteristics with the parties to sales contracts, the full panoply of UCC — Article 2 remedies can easily be translated and applied to lease contracts.

UCC-2A not only provides clear measures of damages upon breach of contract, but also provides: clear standards for anticipatory repudiation by a party to a contract when anticipated performance by another party becomes insecure; for rejection of goods that do not conform to the contract; for excused non-performance of the contract; and for specific performance under appropriate circumstances.

UCC-2A remedies carry over the original Article 2 policies of encouraging cure of default without litigation and of mitigation of damages whenever and wherever possible.

⑤ WARRANTIES

UCC-2A establishes and standardizes warranties for true leases. It follows

closely Article 2 of the UCC, but it does not protect title, since title remains with the lessor. Rather than title, UCC-2A warrants against infringement with lease rights.

There are two kinds of implied warranties: merchantability and fitness for a particular purpose. Both are directly derived from Article 2 of the UCC. The warranty of merchantability assures the resalability of goods between merchants. The fitness warranty presumes a purpose and reliance upon the lessor to supply goods fit for the purpose. These warranties can be excluded or modified by agreement.

UCC-2A implied warranties do not apply to finance leases. In that case the implied warranties under Article 2 of the supplier to the lessor are passed on to the lessee.

⑥ CONSUMER LEASES

UCC-2A defines a consumer lease as a lease in which the lessee takes the lease primarily for a personal, family or household purpose, when the total payments do not exceed \$25,000. UCC-2A does provide some protection for lessees in a consumer lease. Among other things, there is a burden on the lessor to justify acceleration of rentals in a consumer lease. But most consumer protection is left to other laws.

FIXTURE AND ACCESSION PROBLEM

UCC-2A settles recurring problems of what to do with leased goods that become fixtures and accessions and who has priority in each case.

Fixtures are defined as "goods so related to particular real estate that an interest in them arises under real estate law." Generally, if goods are leased and become fixtures, the lessor with prior interest in them has priority over those with the real estate interests — if the lessor perfects his or her prior interest with a fixture filing under UCC — Article 9.

An accession occurs when leased goods are "installed in or affixed to other goods." Any existing rights in a lease contract are superior to any rights in the whole in which leased goods become accession after the lease contract is entered.

CONCLUSION

The changes in leasing transactions in recent years make it clear that modernization is long overdue. States now depend on the common law to resolve disputes over lease contracts. This creates great uncertainty, particularly for companies that conduct business in more than one state, since case law conflicts from state to state. Additionally, some important issues have never been adequately addressed in the common law, and UCC - 2A answers these immediate needs.

UNIFORM COMMERCIAL CODE

ARTICLE 4A — FUNDS TRANSFERS

— A Summary —

The payment of obligations is of vital importance to almost all commercial transactions. Occasionally problems arise when payment is not made, or is made improperly. It is neither convenient nor prudent to pay large or even modest obligations in actual cash. So, individuals and corporations, big account holders and small, have turned to bank accounts and bank credit, and have paid obligations by written instruments that accomplish a transfer of bank credit - check, money order, bank draft, etc. For the past twenty years, in every state, the rights and obligations of parties to payment by check have been governed by Articles 3 and 4 of the Uniform Commercial Code (UCC). Checks will remain the method by which many obligations are paid for the foreseeable future. However, electronic technology is now a fact of life and new methods for transferring bank credit for the purposes of payment are a result. Article 4A is a reflection of this fact.

How has technology affected systems of payment? Most people are aware of automated teller machines for their personal use. Indeed, these machines have become very popular. But such technology is widely used to make large transfers of funds that satisfy obligations arising from commercial transactions as well. The technology is simply too convenient and too fast not to be used for the transfer of large sums around the world.

The amounts which move through the large value automated systems are truly staggering. In 1989 as Article 4A is promulgated, one trillion dollars are transferred on an average day. In 1989, a record day of three trillion dollars was recorded. This is roughly the 1989 gross national product of the United States. Undoubtedly, this record will be surpassed in due course

and probably frequently in the future. Such figures indicate the impact of the technology. They also indicate the need for some governing law.

In 1989, as the new Article 4A is proposed to the states for adoption, there is no backstop statutory law to govern funds transfers. The rules for checks in Articles 3 and 4, which utilize the signatures and endorsements on the check as the basis for determining liability, do not apply to electronic funds transfers.

Not are the rules governing the liability of banks to customers under Article 4 helpful. Many transfers in the United States are effected through electronic transfer networks; one is owned and operated by the Federal Reserve and is known as FedWire and the other is owned and operated by the New York Clearing House and is known as CHIPS (Clearing House Interbank Payments Systems). Each of these systems has rules to govern transactions between participating banks, but they do not affect bank customers. Outside FedWire and CHIPS, common-law contract rules are the basis for determining liability. However, serviceable, negotiated contracts are rare. Bank customers usually need a funds transfer immediately and do not take the time to negotiate a contract. Transfers are frequently made in a legal void.

Article 4A is the remedy for this void. Because the total volume of funds transfers is very great and because many individual transactions are very large, the cost of uncertainty in the law could be very high. Article 4A is necessary to the continued usage of existing funds transfers and for the anticipated future expansion in this usage.

Some terminology is necessary to follow a funds transfer under Article 4A. A "sender" is any person or entity who sends a "payment order." The first sender

is the originator, and subsequent senders are banks participating in the transfer. A sender communicates a "payment order" to a "receiving bank." Receiving banks become senders if they forward "payment orders" to other banks. The last bank in the communications chain is the beneficiary's bank, and it can never be a sender with respect to the specific funds transfer. The "beneficiary" is the entity that the sender intends to pay. A "payment order" is simply the form of communication that the parties to a funds transfer agree to use. The payment order's salient characteristics are that it calls for an unconditional payment of money from the sender to the beneficiary and that it is transmitted to a receiving bank.

Unless the persons or entities involved in a payment of money use the same bank, a funds transfer involves at least four parties: the originator of the payment; the bank to which the originator communicates the first payment order; the beneficiary's bank that receives the final payment order; and last, the beneficiary. Intermediary receiving and sending banks also may be involved. These are banks that act as conduits of payment when there is no capacity to communicate directly between the originator's bank and the beneficiary's bank.

An example illustrates the process of a funds transfer. Suppose Alpha Corporation wants to pay money to Beta Corporation to satisfy a large contractual obligation. Alpha is in New York, and Beta is in California. Alpha has a bank account with a balance sufficient to pay Beta at First Bank in New York. Beta maintains an account at Second Bank in California. The process of payment is simple. Alpha orders First Bank to pay the owed money to Beta through a transfer to Second Bank. Alpha's order is pursuant to an agreement that Alpha has with First Bank. When First Bank receives the payment order from Alpha, it communicates with Second Bank. The communication indicates that a specific amount at First Bank held for Alpha will be transferred to Second Bank with the understanding that it will be passed on to Beta. Second Bank accepts this second payment order and notifies Beta that the money is available to Beta. Value passes

between the two banks through accounting entries in a process known as settlement.

With simple transactions, why do we need a whole new article in the Uniform Commercial Code? New law - or any law - isn't necessary if everything works. But what if something goes wrong? What if First Bank makes a mistake as to the amount to be paid? What happens if Second Bank doesn't notify Beta? What happens if the payment order is fraudulent, and not actually issued by Alpha? What happens if there is a bank failure? These are a few examples of possible errors.

A funds transfer is like a string of Christmas lights: everything is fine until a light burns out. There must be a remedy for the burned out light, and to the extent there are losses they must be paid. What are the remedies if someone takes a loss? Who bears the risk of loss at a given time in the transactional process? No adequate answers to these questions exist without a backstop statutory law that allocates the loss at the appropriate places in the funds transfer. Article 4A provides clear and reliable answers, and thereby keeps the string of lights burning.

To resolve the problem of who is responsible when something in a funds transfer goes wrong, Article 4A divides the actions of the parties to a funds transfer into three essential parts. First, a funds transfer is initiated by the originator and accepted by the originator's bank. Part 2 of Article 4A, entitled "Issue and Acceptance of Payment Order," governs the relationship between the sender of a payment order and the receiving bank that will execute the payment order. What constitutes acceptance and rejection (both rightful and wrongful) of a payment order, and what must be done to amend a payment order, are determined by the rules of Part 2, as these involve the relationship between the sender and receiving bank in a funds transfer.

As between sender and receiving bank, who suffers a loss if there is a mistake? Part 2 of Article 4A resolves this critical issue. Two kinds of mistakes can occur between sender and receiving bank, an un-

authorized payment order and an erroneous payment order. The key to the rules on an unauthorized payment order is the "security procedure" that exists between sender and receiving bank. This is the agreed procedure that verifies the authenticity of a payment order or other relevant communication. In electronic funds transfer systems, the security procedure is an important element, and may involve codes, encryption, callback procedures, and the like. Any procedure that can be devised to protect the transaction is eligible. To be legally effective, it must only be commercially reasonable.

The security procedure determines who takes the risk of loss when there is an unauthorized payment order. If there is a commercially reasonable security procedure that is followed by the receiving bank, the sender must absorb the loss. If the sender proves that the security procedure was not followed or was breached by someone outside the control of the sender, the receiving bank takes the loss. The assumption is that the security procedure, if followed and not breached, will verify the authenticity of payment orders. ³

The risk of loss for an erroneous payment order also hinges upon compliance with a security procedure for detecting error. If the sender proves that it complied with the security procedure, the receiving bank takes the loss. Otherwise, the sender is responsible for erroneous orders.

² The second part of a funds transfer is the passage of funds from receiving bank to receiving bank, until the beneficiary's bank is contacted. This is covered by Part 3 of Article 4A, which is entitled "Execution of Sender's Payment Order by Receiving Bank."

Rules governing the relationship between receiving banks are contained in this part. A principal obligation of a receiving bank (other than the beneficiary's bank) is to "execute" a payment order once it has accepted the order - that is, pass it on to the next bank in the string. It executes by issuing a payment order to the next bank. (The beneficiary's bank has a different obligation. It must pay the obligation

to the beneficiary, and that is covered in Part 4 of Article 4A.) Unless agreed otherwise, a bank may use any commercially reasonable method to issue a payment order. A receiving bank is, generally, responsible for any error it commits in issuing a payment order. If a receiving bank overpays the beneficiary of a payment order, the excess is recovered from the beneficiary, not from prior senders. If a receiving bank pays a person or entity that is not the intended beneficiary, recovery is from the person receiving the money, and not from any prior sender. Only if a receiving bank underpays in a payment order, may the bank recover from prior senders, and then only an amount to cover the error and only if it issues a curative order.

Part 3 of Article 4A covers other issues pertaining to receiving banks. For instance, rules on reporting an erroneous payment order and late execution of a payment order are furnished.

The last part of a funds transfer involves actual payment to the beneficiary. It is the subject of Part 4 of Article 4A, "Payment." Each sender, going back to the originator, is obligated to pay. At a given time, the beneficiary is considered to have been paid. There is a two step approach to actual payment, although the steps are accomplished simultaneously if the transfer is made by Fedwire. First, credit is extended by each receiving bank to each sender when the sender's payment order is accepted - basically, a communications function. The second stage involves settling up between participants - the actual passage of value.

Perhaps the most important section in Part 4 is Section 4A-402. It provides that a sender of a payment order is obliged to pay the amount of the order to the receiving bank if the funds transfer is properly completed. It is essential to distinguish, in this regard, a payment order from a check.

A check is a kind of payment order. When a person writes a check on an account, it orders the institution in which the account resides to pay money to a named person (whose technical name is the payee). Although a check suspends the liability of the person

who writes it for an underlying obligation until the instrument is rightfully presented for payment and paid at the institution in which the account resides, it can be passed from person to person as payment for other obligations and accrues and extinguishes liabilities for those persons as it passes between them. If the institution refuses to pay when the check is presented, then the person who initially wrote the check is liable for the underlying obligation as well as for the check. In contrast, acceptance of a payment order for a funds transfer by a receiving bank obligates the sender to pay that bank, and that bank alone. There is no instrument that may be passed from hand to hand as payment between other people. There are no lingering liabilities that result from the negotiability of an instrument. A payment order for a funds transfer is simple and direct.

How does settlement take place? If the sender is a bank, and the funds transfer is through one of the funds transfer systems, payment takes place according to the rules of the system that govern settlement between banks. Typically, payment is a matter of debiting an account of the sender with the receiving bank, and crediting the receiving bank's account. These methods hold whether the sender is an individual or a bank.

The beneficiary's bank, the last bank in the string, is responsible for paying the beneficiary. Payment generally takes place by crediting an account of the beneficiary, although satisfaction of a beneficiary's debt also constitutes payment, and payment in general occurs when the funds are available to the beneficiary for withdrawal. The originator of a payment order, that first light in the string of lights, generally is deemed to have paid the beneficiary on the underlying commercial obligation when the beneficiary's bank accepts the payment order. If it seems premature to discharge the originator, it is because at the time of acceptance by the beneficiary's bank, the originator has done all

in its power to see that the beneficiary has obtained a credit balance at the beneficiary's bank in the agreed-upon amount. It is analogous to a situation where the originator has deposited cash to the beneficiary's account at beneficiary's bank. At that point, the originator's obligation to the beneficiary should be considered satisfied.

Finally, there are some other features of Article 4A to be considered. First, any transaction that is subject to the Electronic Funds Transfer Act of 1978 is not subject to Article 4A. This express exclusion places consumer transactions outside Article 4A, and leaves them to federal law. Second, the regulations and operating circulars of the Federal Reserve Board supersede any inconsistent provision of Article 4A. Third, transfer system rules will prevail if inconsistent with any part of Article 4A. Fourth, it is possible to vary the effect of most of the provisions of Article 4A, honoring the general Uniform Commercial Code policy of freedom of contract.

The fifth matter of special interest needs extra emphasis. Funds transfers occur and are useful so long as it is fast, efficient and inexpensive to use current and future electronic methods. A great deal of money can be passed through the current system for very little comparative cost. Therefore, Article 4A limits consequential damages for improper payment orders. Consequential damages might raise costs, reduce transaction speed by requiring the exercise of discretion by management, and increase uncertainty.

Article 4A of the Uniform Commercial Code is essential law. The continuance and viability of funds transfers depends upon its advancement in the states. And uniformity is an absolute requirement in every state, unconditionally and without deviation. Otherwise, there will be impairment of the functioning of funds transfers for the long term.

SB1
16 Jan
EX 72

ARTICLE 6

BULK TRANSFERS

INTRODUCTION

For a discussion of problems under Article 6, see Benett, "Bulk Transfers Under the Uniform Commercial Code," 19 U.Kan.L.Rev. 709 (1971); Lakin, "Bulk Transfers: What Hath the Uniform Commercial Code Wrought?" 35 Md.L.Rev. 197 (1975); Larson, "Bulk Transfers: Some Interpretive Problems," 2 Rutgers-Camden L.J. 101 (1970); Rapson, "Article 6 of the Uniform Commercial Code: Problems and Pitfalls in Conducting Bulk Sales," 68 Com.L.J. 226 (1963); Clontz, "Should an Article 6 Study Be the Next Task for the Permanent Editorial Board?" 4 U.C.C.L.J. 214 (1972); Hawkland, "Trouble With Article 6 of the UCC: Some Thoughts about Section 6-103," 82 Com.L.J. 113 (1977); Levit, "Bulk Transfers: Stepchild of the Uniform Commercial Code?" 46 Notre Dame Law. 694 (1971).

The provisions of Article 6 have been expressly pre-empted by the provisions of the Illinois Farm Equipment Fair Dealership Law (Ill.—S.H.A. ch. 5, §§ 1501, 1506 (hereinafter, the "Farm Act"). The Farm Act provides that upon termination of a farm equipment dealership franchise, the dealer is to return unsold inventory to the manufacturer. When the dealer receives payment for the returned inventory, the title reverts to the manufacturer. The purpose of the title retention provision in the statute is to protect farm implement dealers from problems caused in recent years by the depressed and unstable farm economy. In re White Farm Equipment Co., 63 B.R. 800 (Bkrtcy.Ill.1986).

Following a study of Article 6 (and recommendations thereon) by a subcommittee of the Uniform Commercial Code Committee of the Corporation, Banking and Business Law Section of the American Bar Association as a result of criticisms in legal periodicals (including some of the aforementioned), the National Conference of Commissioners on Uniform State Laws, in cooperation with the American Law Institute, has appointed a Drafting Committee which has Article 6 under study. The Chairman of the Drafting Committee is Dean and Professor Gerald L. Bepko, Indiana University School of Law, Indianapolis, and the Reporter is Chancellor and Professor William D. Hawkland, Louisiana State University of Law Center, Baton Rouge. An excellent discussion of the scope and direction of revised Article 6 is contained in "The Article 6 Drafting Committee's New Approach to Asset Acquisitions," Steven L. Harris, 42 The Business Lawyer 1261 (1987).

The National Conference of Commissioners on Uniform State Laws voted on a revised draft of Article 6 at their annual meeting in 1988. They elected to present to each state the option of replacing current Article 6 with a revised Article or of repealing Article 6 and doing without a bulk sales law. They further

§ 6-102

BULK TRANSFERS

Art. 6

Form 1

electd to recommend that the states elect the repeal option. At its 1988 annual meeting, the American Law Institute expressed strong support for the repeal option considered by the National Conference. In reviewing the new version alternatively proposed by the National Conference, the ALI changed the Article's definition of "good faith" from Section 1-201(19)'s general "honesty in fact" standard to the merchant's standard of "reasonable commercial standards of fair dealing" set forth in Section 2-103(1)(b).

§ 6-102—FORM 1

**Provision in Contract of Sale Requiring Compliance
With Article 6 of the Uniform Commercial Code**

(Bulk Transfers)

AUTHORS' COMMENT

The burden of proving that a bulk transfer has occurred is placed upon the creditor seeking to avoid the transfer. In order to show that a "major part" of the debtor's inventory has been transferred, the creditor should furnish proof of the total inventory of the debtor and the percentage of that inventory represented by the transferee's purchase. *Bergen, Johnson & Olson v. Verco Mfg. Co.*, 690 S.W.2d 115 (Tex.App.1985), error refused n.r.e. See also *Nichols Motorcycle Supply, Inc. v. Regency Kawasaki, Inc.*, 295 S.C. 138, 367 S.E.2d 438 (App.1988) (a sale of \$30,000 of used and junk motorcycles and parts by a retail motorcycle dealer is a bulk transfer under the Code, when the dealer is left with only \$20,000 worth of inventory and equipment after the sale).

If the contemplated transfer is clearly not a bulk transfer, a provision like the above is not necessary. For example, in *Martin Marietta Corp. v. New Jersey Nat'l Bank*, 653 F.2d 799 (3d Cir.1981), affirming in part and reversing in part 505 F.Supp. 946 (D.C.N.J.), the court held that a sale of 40,000 tons of sand per month for 3 months was not a bulk transfer in view of an inventory of about 500,000 tons during a relevant six-month period; that the plant from which the sand was extracted occupied 1500 acres and had a potential yield of 50 million tons of natural sand. In *Aab v. Loehmann's Inc.*, 8 B.R. 777, 30 U.C.C. Rep.Serv. 1411 (S.D.N.Y.1981), the court rejected the bulk transfer contention of a trustee in bankruptcy of a company formerly engaged in the business of manufacturing and distributing finished apparel products, including women's apparel. In a one-week period a New York organization engaged in the operation of women's discount apparel stores at numerous locations throughout the United States purchased out-of-season or excess merchandise from the manufacturer for \$10,655. This was a fair and reasonable value for the merchandise, and the quantity purchased during the mentioned period was similar to prior purchases. The court followed the earlier New York decision, *Sternberg v. Rubinstein*, 305 N.Y. 235, 112 N.E.2d 210 (1953), that a sale of off-season merchandise (shoes in that case) rendered obsolete by the passage of time was not out of the ordinary

course of business and therefore was exempt from the bulk transfer law.

The court in *Republic Steel Corp. v. Canyon Culvert Co.*, 104 N.M. 396, 722 P.2d 647 (1986) held that a bulk sale of equipment was not within the scope of Article 6 and did not become so when the seller, shortly thereafter, sold its inventory and certain other assets to a different buyer. The Court opined that a sale of equipment is "in connection with" a sale of inventory for purposes of Section 6-102(2) only if the purchaser of the equipment has reason to know that a substantial part of the seller's inventory has been or will be sold in a reasonably contemporaneous transaction. In reaching its decision, the court relied upon the fact that the seller had represented to the buyer that it had complied with any applicable provisions of Article 6. Thus, if it is unclear whether the contemplated transfer is a bulk transfer, then the prudent draftsman may use the above provision.

A prospective lender knowingly financing a bulk transfer will prudently require in his loan agreement the inclusion of such a clause in the purchase agreement. In *Mayfield Dairy Farms, Inc. v. McKenney*, 612 S.W.2d 154 (Tenn.1981), a bank obtained priority in a court sale of the assets of a grocery business after a bulk transfer of the assets of the business held defective for want of compliance with Article 6, which transfer it had financed for the purchaser on the ground that it had neither actual nor constructive notice of non-compliance and was a purchaser for value in good faith under § 6-110. An unpaid creditor had filed an action seeking satisfaction of its claim out of the assets of the business and requested the court to determine whether the security interest of the bank was subject to the defect in the purchaser's title. In this connection, it should be noted that an action to avoid the bulk sale may successfully be brought, even if the bulk seller is not named as a party defendant. In *Stone's Pharmacy, Inc. v. Pharmacy Accounting Management, Inc.*, 875 F.2d 665 (8th Cir.1989), the court held that, where a bulk seller had declared bankruptcy and could not be named as a party defendant in an action by a creditor to avoid the sale because of the automatic stay in bankruptcy, it was error for the district court to dismiss the creditor's claim against the bulk buyer to avoid the transaction on the ground that the bulk seller was an indispensable party defendant.

In *Cargill, Inc. v. Bunker Hill Elevator Co., Inc.*, 505 N.E.2d 75 (Ind.App.1987), the court held that a debtor's transfer to its secured party in settlement of its debt of a number of trucks and the right to tax refunds due the debtor was not subject to the bulk sale requirements of Article 6. The tax refunds are general intangibles, and therefore not covered by Article 6; and although the trucks are "equipment," the Act exempts transfers which are in settlement of a security interest, as these transfers were.

The downside risk of non-compliance with Article 6 was realized by a transferee in *In re Verco Indus.*, 10 B.R. 347, 31 U.C.C.Rep.Serv. 653 (Bkrtcy.App.Panel, 9th Cir.1981), rev'd 704 F.2d 1134. In September, 1979 Verco, the debtor, agreed to sell a

§ 6-102

BULK TRANSFERS

Art. 6

Form 1

business and in December, 1979 consummated a sale of it to Spartan Plastics without compliance with California's Article 6. In July, 1980 Verco filed a Chapter 11 petition under the Bankruptcy Code and subsequently sued as a debtor in possession to void the transfer under Bankruptcy Code § 544. The consideration for the sale included \$125,600 cash paid to the transferor and a promissory note back to it in the amount of \$37,110. The bankruptcy court held that the transfer was voidable but that the purchaser was relieved of its obligation to pay the note. The Bankruptcy Appellate Panel reversed the latter holding and allowed recovery on the note as well as avoidance of the transfer. In addition, the Panel ruled that the transferee acquired no set-off claim against the estate of the transferor on the ground that the transferor was blameless and that avoidance of the transaction occurred solely because of the failure of the transferee to comply with Article 6. On appeal to the Ninth Circuit, the decision of the Bankruptcy Appellate Panel was reversed on the set-off issue and remanded for a determination of the amount of the set-off to which the transferee would be entitled. In all other respects, the decision of the Bankruptcy Appellate Panel was affirmed.

§ 6-102—FORM 2

Bulk Transfer Agreement Avoiding Compliance With

Article 6

AUTHORS' COMMENT

In *Mercantile Financial Corp. v. P. & F. Indus., Inc.*, 63 A.D. 2d 1014, 406 N.Y.S.2d 357 (1978), an agreement entered into by a parent corporation with a purchaser of its subsidiary's assets to indemnify the purchaser from the claims of the subsidiary's creditors, in lieu of compliance with Article 6 of the Illinois Uniform Commercial Code, was sustained over the objection of an unsecured creditor as not inconsistent with the purpose of Article 6 to protect unsecured creditors. The agreement was held justified in having a "business advantage" as its motive. Moreover, Article 6 did not require notice; it merely made the transfer ineffective.

§ 6-104—FORM 1

Bulk Transfer Affidavit Listing Creditors

AUTHORS' COMMENT

In *Matter of Garden Turf & Supply Corp.*, 440 N.E.2d 710 (Ind.App.1982), the court sustained a sworn affidavit signed on May 31, 1978 of an accompanying list of creditors prepared no earlier than May 26, five days earlier. The case involved an action by the trustee in bankruptcy of the transferor against an auctioneer conducting the bulk transfer. The court held, *inter alia*, that the trustee had failed to prove damages.

Art. 6

BULK TRANSFERS

§ 6-107

Form 1

The question of the effect of an omission of a creditors' name from the transferor's affidavit and of the remedy of the creditor in that event arose in *Adrian Tabin Corp. v. Climax Boutique, Inc.*, 34 N.Y.2d 210, 356 N.Y.S.2d 606, 313 N.E.2d 66 (1974). The trial court voided a bulk transfer made on an affidavit of "no creditors" at the suit of an omitted creditor, holding that the transferee had a duty of careful inquiry as to the existence of creditors and intimating that a review of the transferor's books and questioning him as to the source of the merchandise was necessary. The Appellate Division reversed, and the Court of Appeals affirmed. The reviewing courts held that a bulk transferee who has no knowledge of creditors of his transferor may rely on an affidavit of no creditors furnished by a transferor and that Article 6 did not impose a duty of careful inquiry that existed under pre-Code New York law. The court observed that the omitted creditor was not entirely without remedy—one might exist under the Uniform Fraudulent Conveyance law notwithstanding compliance with Article 6; conceivably a preferential transfer involved in the bulk transfer provided a basis for filing a bankruptcy petition against the transferor; in other jurisdictions optional section 6-106 would provide a remedy for the omitted creditor.

In *Froehlich v. J. R. Froehlich Mfg. Co.*, 93 Ill.App.3d 179, 48 Ill.Dec. 612, 416 N.E.2d 1134 (1981), the court held that the president and principal shareholder of a corporate bulk transferor who was not the alter ego of the corporation was not personally liable to a creditor omitted from a bulk transfer affidavit. The court noted that the creditor had availed herself of a remedy flowing from her judgment against the corporation by receiving monthly payments from the transferee on its note to the transferor for the balance of the purchase price, a remedy contemplated by Article 6.

In *Anderson & Clayton Co. v. Earnest*, 610 S.W.2d 846 (Tex. Civ.App.1980), the court held that an action by a creditor against a transferee asserting his personal liability in a bulk transfer made without compliance with Article 6 failed, principally because of a failure of proof by the creditor. There was no evidence of the value of property sold and of property still held by the transferee; also there was no evidence that disposition had been made of the property in such a way as to place it beyond the reach of creditors.

Also see *Hawkland*, "Remedies of Bulk Transfer Creditors Where There Has Been Compliance With Article 6," 74 Com.L.J. 257 (1969).

§ 6-107—FORM 1

Long Form Notice to Creditors of Bulk Transfer

AUTHORS' COMMENT

Giving adequate written notice to all of the seller's creditors of a proposed bulk sale is critical, even if the seller or buyer

§ 6-107

BULK TRANSFERS

Art. 6

Form 1

believes that certain of the creditors may have actual knowledge of the proposed sale. In *Cinocco Realty, Inc. v. J.L.J., Inc.*, 736 P.2d 421 (Colo.App.1987), the court held that a creditor's actual knowledge of an impending bulk sale did not excuse the buyer's failure to comply with the notice provisions of Article 6.

In *Matter of Garden & Turf Supply Corp.*, 440 N.E.2d 710 (Ind.App.1982), an action by a trustee in bankruptcy of a wholesale lawn and garden distributor against an auctioneer which had conducted an auction sale of the assets of the distributor at the request of its sole stockholder and chief operating officer for the auctioneer's failure to comply with the requirements of the Indiana UCC Article 6, the court held that the notice requirements of UCC § 6-107 (Indiana § 6-106) were not incorporated in the auction setting of UCC § 6-108 (Indiana § 6-107) and that only reasonable notice was required. Reasonable notice would, said the court, contain the date, time and place of the auction, the general nature of the property to be sold (e.g. inventory), the name and address of the debtor and the name and address of the auctioneer. The notice involved met these requirements. The court found that while the auction sale did not meet all the requirements of UCC § 6-108 (Indiana § 6-107), all creditors on the list furnished by the transferor apparently received notice and that the purpose of the statute had been satisfied. The court further held that the trustee had proved no damages. The Ninth Circuit Court of Appeals has ruled that mere failure to give proper notice under the bulk sale requirement as required by Section 6-107 cannot be regarded as "concealment" for the purpose of tolling the statute of limitations set forth in Section 6-111 for bringing actions under the Bulk Sales Act. In *re Borba*, 736 F.2d 1317 (9th Cir.1984). Accord: *Pipeline Materials, Inc., v. Turf Irrigation Corp.*, 754 P.2d 775 (Colo.App.1988) (failure to give notice does not constitute concealment; concealment occurs only where there has been some affirmative act on the part of the seller or buyer to hide the transfer from the seller's creditors). An opposite result was reached by the Court in *In re Seminole Motors, Inc.*, 86 B.R. 245 (E.D.Okl.1987), which held that the seller's failure to give notice of a bulk transfer was concealment, which tolled the running of the six-month claim period.

SENATE JUDICIARYCOMMITTEE52ND LEGISLATIVE SESSION -- 1999Date 16 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsonneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

it is sent down to appropriations to be funded.

REP. BROWN stated that the reason he made his motion is because the last Judicial study done in the area was in 1981. He felt that the caseloads in most of the districts haven't change since that time according to the Judges he talked with about whether the study should be done or not.

Vote: Motion failed 8 to 10. EXHIBIT 9

Motion/Vote: REP. JOHNSON MOVED HB 934 DO PASS. Motion carried 19 to 1 with Rep. Brown voting no.

EXECUTIVE ACTION ON SB 441

Motion: REP. BROOKE MOVED SB 441 BE CONCURRED IN.

Motion: REP. BROOKE moved to amend SB 441.

Discussion: REP. BROOKE stated that her amendment would divide the geographical areas of the bill into 10 judicial districts on each side of the state.

Vote: Motion carried.

Motion: REP. BROOKE MOVED SB 441 BE CONCURRED IN AS AMENDED.

Motion: REP. BECKER moved to amend SB 441 on page 3, line 2, to include the word "consecutive".

Motion/Vote: REP. MEASURE MADE A SUBSTITUTE MOTION to amend SB 441 to strike the language in subsection 2 of section 2, which would allow no limitation on the number of terms that one could serve. Motion carried 15 to 5 with Rep's: Clark, Messmore, Johnson, Boharski, and Nelson voting no.

Motion/Vote: REP. BROOKE MOVED SB 441 BE CONCURRED IN AS AMENDED. Motion carried 19 to 1 with Rep. Clark voting no.

EXECUTIVE ACTION ON SB 1

Motion: REP. STICKNEY MOVED SB 1 BE CONCURRED IN.

Motion/Vote: REP. MEASURE moved to amend SB 1 with the proposed amendments by Sen. Mazurek. EXHIBIT 10. Motion carried.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1981

Date 22 Jan 9

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 1 (first reading copy -- white), respectfully report that Senate Bill No. 1 be amended and as so amended do pass:

1. Title, page 2, lines 12 and 13.

Following: "30-4-503," on line 12

Strike: remainder of line 12 through "30-6-111," on line 13

2. Title, page 2, line 20.

Following: "30-4-109,"

Insert: "30-6-101, 30-6-102, 30-6-103, 30-6-104, 30-6-105, 30-6-106, 30-6-107, 30-6-108,"

Following: "30-6-110,"

Insert: "30-6-111,"

3. Page 291, line 25 through page 325, line 6.

Strike: sections 227 through 234 in their entirety

Renumber: subsequent sections

4. Page 326, line 21 through page 327, line 18.

Strike: section 236 in its entirety

Renumber: subsequent sections

5. Page 330, lines 8 and 9.

Following: "30-4-109," on line 8

Insert: "30-6-101, 30-6-102, 30-6-103, 30-6-104, 30-6-105, 30-6-106, 30-6-107, 30-6-108,"

Following: "30-6-110," on line 9

Insert: "30-6-111,"

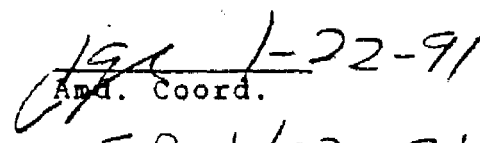
6. Page 331, lines 8 and 10.

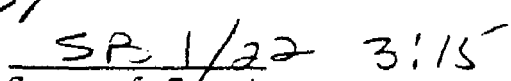
Strike: "235"

Insert: "227"

Signed: 

Richard Finseneault, Chairman


And. Coord.


Sec. of Senate

141453SC.Sji

Exhibit #4
22 Jan 91
SB1

Amendments to Senate Bill No. 1
White Reading Copy

Requested by Senator Mazurek
For the Committee on Judiciary

Prepared by Valencia Lane
January 22, 1991

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Insert: "30-6-111,"
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Renumber: subsequent sections
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Strike: section 236 in its entirety
Renumber: subsequent sections
5. Page 330, lines 8 and 9.
Following: "30-4-109," on line 8
Insert: "30-6-101, 30-6-102, 30-6-103, 30-6-104, 30-6-105, 30-6-106, 30-6-107, 30-6-108,"
Following: "30-6-110," on line 9
Insert: "30-6-111,"
6. Page 331, lines 8 and 10.
Strike: "235"
Insert: "227"

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(H) JUDICIARY

PAGE NBR..... 96
 RUN TIME13:25
 RUN DATE.... 06/04/91

CHAIRMAN--BILL STRIZICH
 NORMAL SCHEDULE==> SITE: ROOM 312-2

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY--JEANNE DOMME

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0001 MAZUREK, JOE	2/02	3/12	REVISE UCC	CONCUR AS AMENDED		3/18
SB0006 MAZUREK, JOE	1/23	2/04	REVISE UNIFORM STATUTORY RULE AGAINST PERPETUITIES	CONCUR		2/04
SB0007 MAZUREK, JOE	3/04	3/12	REPLACE UNIFORM FRAUDULENT CONVEYANCES ACT WITH UNIFORM FRAUD. TRANSFER ACT	CONCUR AS AMENDED		3/14
SB0033 GAGE, DEL	1/16	1/28	CODE COMMISSIONER BILL	CONCUR		1/28
SB0035 WEEDING, CECIL	1/16	1/25	REQUIRE COUNTY ATTORNEY TO SERVE AS LEGAL ADVISER TO HOSPITAL DISTRICT	CONCUR		1/25
SB0037 HALLIGAN, MIKE	1/22	2/07	REQUIRE COUNTIES TO PROVIDE YOUTH DETENTION SERVICES INCL. REG. FACILITIES	CONCUR AS AMENDED	APPROPRIATIONS	2/11
SB0038 HALLIGAN, MIKE	1/22	2/07	REVISE THE 24-HOUR STATUTORY PERIOD FOR HOLDING A YOUTH IN JAIL	CONCUR		2/11
SB0039 HALLIGAN, MIKE	1/22	2/08	ELIMINATE INCARCERATION IN JAIL FOR MINOR TRAFFIC OFFENSES	CONCUR AS AMENDED		2/11
SB0049 WATERMAN, MIGNON	1/25	2/05	CREATE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROP.	CONCUR AS AMENDED		2/06
SB0051 VAN VALKENBURG, FRED	2/11	3/08	REVISE CRIMINAL PROCEDURE	CONCUR AS AMENDED		3/26
SB0056 YELLOWTAIL JR., BILL	1/24	2/07	RESTRICT PLACEMENT OR EVALUATION OF YOUTH AT A YOUTH CORRECTIONAL FACILITY	CONCUR		2/11

HEARING ON SB 1
REVISE UCC

Presentation and Opening Statement by Sponsor:

SEN. MAZUREK, SENATE DISTRICT 22, stated that SB 1 has been worked on over the past interim. He stated that the bill would generally revise the Uniform Commercial Code. He stated the premier product of the National Conference of Commissioners on Uniform State Laws is the Uniform Commercial Code and was propagated in 1951 and adopted in every state in the union. It is the basic law that governs all commercial transactions in the country. He stated that SB 1 proposes to modernize the Uniform Commercial Code in several key areas. He provided an explanatory statement of each of the section of the bill. EXHIBIT 3. He stated that one section deals with leases. He felt there is a great deal of leasing being done in Montana at the present time. There is no general law dealing with leases of personal property in a business sense. Section 7 adopts article 2a of the Uniform Commercial Code dealing with leases of personal property.

He stated the next portion of the bill is a new section called article 4a in section 189 to 226 that deals with electronic fund transfers. He felt that not many people will have a need for electronic fund transfers because this section deals only with the computerized transfer of large sums of money, generally averaging \$5,000,000, between major banks. He stated that this was an attempt to make a set of rules that would govern how large sums of money be transferred between banks across the country.

He stated that the third section of the bill is in section 87 through 188 is a modernization of the negotiable instruments laws of the country that deals the use of electronic transfers that allows one to pay money directly out of a checking account. The state is trying to avoid the Federal Government from taking over these areas. It is an area that has always been left to the state, but because the Uniform Commercial Code didn't move in and take up the slack in these areas, the Federal Government is wanting to deal with regulations in these areas.

He stated that the fourth area of the bill deals with the repealer. A lawyer that has been involved in the sale or purchase of a business have probably come in compliance of article 6 of the Uniform Commercial Code which is the Bulk Sales Provision. He stated that this bill would repeal those provisions which have been ignored in Montana because the law requires one to give letters to your creditors before the sale was completed and if the buyer didn't see that was done they could become responsible for the debts. The process was cumbersome, expensive and time consuming and generally not complied with by agreeing if the person didn't pay the debts the buyer could offset.

Proponents' Testimony:

Bob Pyfer, Vice President - Montana Credit Unions League, stated that he attests to the process that includes the Montana Uniform State Commission of Law goes through and the expertise and talent they have at their disposal is very awesome. He stated that SB 1 would have impact on credit unions and his national association has a UCC committee that did have input into the bill and feels that the bill takes a balanced approach that modernizes the law by filling in some gaps. He urged the committee to give SB 1 a favorable consideration.

Opponents' Testimony: NONE

Questions From Committee Members:

REP. TOOLE asked SEN. MAZUREK if there is anything going on, nationally, that would suggest that any of these proposals have not been successfully adopted? SEN. MAZUREK stated, "no," but if he was asked that four years ago regarding leases, he would have said yes. He said that leases had gone back to the drawing board and now is widely accepted and working in many states. Now there is a major push to adopt the article dealing with leases.

REP. BROOKE asked SEN. MAZUREK asked if the Federal Government has control of regulation these codes? SEN. MAZUREK stated that the consumer transfers to credit cards machines are not governed by article 4a but by Federal Law. He stated that he hoped states would look at bank charges as opposed to the Federal Government doing it. He felt that it one of the arguments for the code to be modernized.

Closing by Sponsor:

SEN. MAZUREK urged the committee to give SB 1 a do pass consideration.

HEARING ON SB 7
UNIFORM FRAUDULENT TRANSFERS ACT

Presentation and Opening Statement by Sponsor:

SEN. MAZUREK, SENATE DISTRICT 22, stated that SB 7 would replace the Uniform Fraudulent Advances Act with the Uniform Fraudulent Transfers Act. He passed the committee an explanation of the Uniform Fraudulent Transfers Act and some arguments as to why it should be adopted. EXHIBIT 4. He stated that the theme of the act is that citizens of society are only as good as their word as to the extent in which they honor their obligations. Obligations which are incurred should not be avoided by manipulation. He stated that the bill recognizes how important creditors are to society and attempts to assure availability by providing protection to creditors against debtors who seek to avoid their

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-12-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	not		
REP. BILL STRIZICH, CHAIRMAN	/		

UNIFORM COMMERCIAL CODE, ARTICLE 2A — LEASES

— A Summary —

The Uniform Commercial Code (UCC) Article 2A — Leases, governs true leases of goods. In a true lease, the lessor gives possession and right to use the goods to the lessee for a fixed period of time in return for rent. The title to the property and a meaningful residual interest remain with the lessor.

A "finance lease" is a true lease in which the lessor is not the fundamental supplier of the goods leased, but leases goods to lessees as a means of financing their acquisition. UCC — 2A governs "finance leases" as well as other true leases, but "finance leases" are treated differently from other true leases in certain respects. The principal differences in treatment will be discussed in subsequent paragraphs of this summary.

UCC — 2A is largely derived from the sales article of the UCC — Article 2. It provides basic contract rules, including matters of offer and acceptance, statutes of frauds, warranties, assignment of interests, and remedies upon breach of contract. There are five parts to the UCC — 2A: (1) General Provisions, (2) Formation and Construction of a Lease Contract, (3) Effect of a Lease Contract, (4) Performance of a Lease Contract, and (5) Default.

1 General Provisions

The General Provisions include the large, general definitions section and general rules pertaining to the construction of leasing contracts, including conflict of law provisions, choice of forum rules, and inter-

pretation of remedies. Most of these provisions are drawn from Article 2 of the UCC.

UCC — 2A creates an entity called the "lessee in the ordinary course of business." The definition parallels the "buyer in the ordinary course of business" in the UCC. Both take property free of prior encumbrances, under the appropriate conditions, and are essential to commercial enterprise.

UCC — 2A also defines "supplier" as "a person from whom a lessor buys or leases goods to be leased under a finance lease." This definition is important because goods in a "finance lease" must come from another source than a lessor.

2 Formation and Construction of a Lease Contract

In a sale transaction, the UCC provides warranties of title and against infringement by any claims of another person. There are similar warranties in UCC — 2A, although title is not protected, since title remains in the lessor. But the lessor does warrant the lessee's enjoyment of the leasehold interest against "a claim to or interest in the goods that arose from an act or omission of the lessor." This warranty applies to all lease contracts. Infringement, however, is not warranted against in finance leases, and this warranty only binds a merchant-lessor; who deals regularly in goods of the kind.

Implied warranties are of two kinds, merchantability and fitness for a particular pur-

WHY STATES SHOULD ADOPT ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE — LEASES

The leasing of large scale items ranging from oil-drilling platforms to automobiles is big business in this country, with an estimated dollar volume reaching \$150 billion. Yet the laws governing leasing have not kept pace with the intricacies of today's leasing arrangements, resulting in considerable uncertainty for lessors and lessees alike.

To fill this gap, the Uniform Law Commissioners approved a new amendment to the Uniform Commercial Code: Article 2A — Leases. UCC-2A provides for the fundamentals of the leasing contract, including the formation of the contract, provisions for express and implied warranties, and damages for breach of a leasing contract.

Historically, we have thought of financed purchase transactions as conditional sales. As sales, such transactions fall under the UCC, particularly Articles 2 and 9. But a leasing transaction, even though very similar to a conditional sale in many ways, is not clearly subject to the UCC. The rights and remedies of the lessor and lessee, therefore, are not well defined, and courts have characterized these transactions differently from jurisdiction to jurisdiction. Many troubling issues have been extensively and confusingly litigated.

① *Finance
Leases*
② *Consumer
Leases*

UCC-2A gives leasing transactions an appropriate underpinning in the law. Because of the broad similarities between lease and sales transactions, that underpinning is largely derived from the sales article of the UCC — Article 2. Hence the new article is 2A, indicating its relationship to Article 2. Article 2 has been adopted in every state except Louisiana.

There are a number of reasons all states should adopt UCC — Article 2A, Leases:

①

LEASES SHOULD BE A PART OF THE UCC

Since leases are an important part of business and commercial law, they should be governed by the Uniform Commercial Code. Further, the leasing business is interstate in character. Uniformity is as important to the conduct of leasing transactions as it is to sales transactions.

②

LEASES AS SECURED TRANSACTIONS

Perhaps the most important question answered in UCC-2A is when leases are subject to UCC-Article 9 on "Secured Transactions." Certain lease contracts establish what effectively are conditional sales, in which the lessor is no different from a creditor subject to Article 9.

The prior law has never effectively dealt with the issue, and concrete standards are established in UCC-2A and an accompanying amendment to UCC-1-

201(37), which is a basic definition section in the UCC. Under these provisions, a secured transaction occurs when the lessor has no meaningful residual rights in goods when the lease expires. In a true lease, the rights to the goods revert to the lessor when the lease term ends. But if the contract terms indicate that the rights to this residue are valueless, then it can be inferred that the lease really amounted to a conditional sale of the goods. Article 9 then should and would apply.

③ FINANCE LEASES

UCC-2A creates a separate category of leases called "finance leases" to eliminate existing confusion over the rights of parties in such leases. Finance leases are characterized by the unique position of the lessor — as purchaser of goods only for the purpose of delivering them to a lessee pursuant to a lease contract.

Because the lessor is not the real supplier of the goods, and acts merely to finance the goods in the hands of the lessee, certain of lessee's rights are best served by imposing obligations on the real supplier and by limiting some rights against the lessor. UCC-2A does not give a lessee implied warranties against a lessor in a finance lease, but passes the lessor's warranties against the real supplier under Article 2 on the lessee.

UCC-2A also further limits a lessee's already limited rights to reject goods, once accepted under the contract, or to cancel, terminate, modify, excuse or substitute performance under the lease contract. The lessee relies upon warranty rights against the supplier, and the lessor is treated as the financing entity it really is.

④ REMEDIES

Prior law does not provide clear remedies for leasing transactions. Because the parties to lease contracts share substantial characteristics with the parties to sales contracts, the full panoply of UCC — Article 2 remedies can easily be translated and applied to lease contracts.

UCC-2A not only provides clear measures of damages upon breach of contract, but also provides: clear standards for anticipatory repudiation by a party to a contract when anticipated performance by another party becomes insecure; for rejection of goods that do not conform to the contract; for excused non-performance of the contract; and for specific performance under appropriate circumstances.

UCC-2A remedies carry over the original Article 2 policies of encouraging cure of default without litigation and of mitigation of damages whenever and wherever possible.

⑤ WARRANTIES

UCC-2A establishes and standardizes warranties for true leases. It follows

closely Article 2 of the UCC, but it does not protect title, since title remains with the lessor. Rather than title, UCC-2A warrants against infringement with lease rights.

There are two kinds of implied warranties: merchantability and fitness for a particular purpose. Both are directly derived from Article 2 of the UCC. The warranty of merchantability assures the resalability of goods between merchants. The fitness warranty presumes a purpose and reliance upon the lessor to supply goods fit for the purpose. These warranties can be excluded or modified by agreement.

UCC-2A implied warranties do not apply to finance leases. In that case the implied warranties under Article 2 of the supplier to the lessor are passed on to the lessee.

⑥ CONSUMER LEASES

UCC-2A defines a consumer lease as a lease in which the lessee takes the lease primarily for a personal, family or household purpose, when the total payments do not exceed \$25,000. UCC-2A does provide some protection for lessees in a consumer lease. Among other things, there is a burden on the lessor to justify acceleration of rentals in a consumer lease. But most consumer protection is left to other laws.

FIXTURE AND ACCESSION PROBLEM

UCC-2A settles recurring problems of what to do with leased goods that become fixtures and accessions and who has priority in each case.

Fixtures are defined as "goods so related to particular real estate that an interest in them arises under real estate law." Generally, if goods are leased and become fixtures, the lessor with prior interest in them has priority over those with the real estate interests — if the lessor perfects his or her prior interest with a fixture filing under UCC — Article 9.

An accession occurs when leased goods are "installed in or affixed to other goods." Any existing rights in a lease contract are superior to any rights in the whole in which leased goods become accession after the lease contract is entered.

CONCLUSION

The changes in leasing transactions in recent years make it clear that modernization is long overdue. States now depend on the common law to resolve disputes over lease contracts. This creates great uncertainty, particularly for companies that conduct business in more than one state, since case law conflicts from state to state. Additionally, some important issues have never been adequately addressed in the common law, and UCC — 2A answers these immediate needs.

pose. Both kinds of implied warranty are directly derived from the Article 2 of the UCC. The warranty of merchantability operates between merchants, and assures the resalability of goods. The fitness warranty presumes a purpose and reliance upon the lessor to supply goods fit for the purpose. Both kinds of implied warranties can be excluded or modified by agreement.

Implied warranties of quality (and against infringement) by lessors do not similarly apply to finance leases. UCC - 2A instead passes any implied warranties of the supplier-seller to the lessor-buyer under Article 2, to the lessee under a finance lease. The finance lessor does not directly make such warranties.

③ Effect of a Lease Contract

Generally, a lessee's rights under a lease contract or the residual rights of a lessor are freely transferable, unless the contract prohibits the transfer or unless transfer risks the other party's contract rights. An assignment, so-called, of lease rights is treated as any transfer is, and is presumed to transfer both rights and obligation, unless otherwise specified in the agreement.

If a subsequent lease is entered when there is an existing lease, the subsequent lease is subject to the prior lease. However, a subsequent "lessee in the ordinary course of business," who deals with a lessor who is a merchant dealing in goods of the kind leased and to whom the goods are entrusted under the prior lease, will take goods free of the prior, existing lease contract.

Another third party issue dealt with in Part 3 of UCC - 2A is lien priorities. Here, UCC - 2A becomes analogous to provisions in UCC, Article 9. A statutory materialmen's lien has priority over any interest in a lease contract, unless other law sets a different priority. Otherwise, lessee's

creditors take subject to the lease contract. Lessor's creditors with prior interests to those arising under a lease contract, generally, take priority over interests arising under the contract.

However, a "lessee in the ordinary course of business" takes free of any prior perfected security interests, unless the lessee has specific knowledge of their existence. A prior interest of a lessee takes priority over a subsequent interest of a lessor's creditor. But there are special instances in which a creditor of a lessor has priority over a lessee's interest, even though the lease interest is prior in time. Included are instances in which depriving the creditor of possession of the collateral would be fraudulent to the creditor "under any statute or rule of law."

Goods that become fixtures present priority problems when leased. Fixtures are defined as goods "so related to particular real estate that an interest in them arises under real estate law." Who has priority between the lessor and those holding the real-estate interests?

Generally, if goods are leased and become fixtures, the lessor with prior interest in them has priority over those with the real estate interests - if the lessor perfects his or her prior interest with a fixture filing under Article 9 of the UCC. A fixture filing is made by placing an appropriate financing statement in the real estate records. There are instances in which a lessor can retain an interest against the real estate holder without filing, but a fixture filing will generally be essential.

"Accessions" also present a special problem. An "accession" occurs when leased goods "are installed in or affixed to other goods." Any existing rights in a lease contract are superior to any rights in the whole in which leased goods become accession after the lease contract is entered. If the lease contract arises at the time goods be-

come accessions or after, earlier interests in the whole have priority. If someone purchases the whole after a lease contract, rights under the lease contract take priority over the purchaser's rights. However, a "buyer in the ordinary course of business," or a prior creditor who makes advances without knowledge of the lease contract, takes priority over a lessor or lessee, even though the lease contract precedes the purchase or advance in time.

⑤

Default

Upon default, UCC - 2A provides remedies in Part 5, including damages and equitable remedies, such as specific performance. UCC - 2A permits cover. That is, a party may seek goods from another source to limit losses. Mitigation of damages is encouraged. The general measure of any damage is actual loss.

④

Performance of a Lease Contract

Part 4 of UCC - 2A deals with performance and repudiation of a contract, with substituted performance and with excused performance. If performance is to be impaired, however, UCC - 2A gives contracting parties the latitude to minimize losses.

For example, a party to a lease contract who has reasonable grounds for insecurity as to the performance of the other party, may demand written assurance of performance. Until written assurance is provided, the demanding party may suspend his or her performance. If assurance is not given in a reasonable time, the contract may be treated as repudiated.

When performance is impaired without the fault of either party, because of such events as failure of an agreed means of transport, a commercially reasonable substitute must be accepted. There are instances in which performance may be excused: "If performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was basic assumption on which the lease contract was made." The lessor must notify the lessee (and the supplier if there is a finance lease) of delay or non-delivery. These are examples of the options open to contracting parties.

Lease Transactions as Secured Transactions

The last issue of importance addressed in UCC - 2A is an added appendix, consisting of a crucial amendment to Section 1-201(37) of the UCC, which defines the term security interest. If a lease involves a "security interest," it is subject to Article 9 of the UCC. A lease involves a security interest, dependent upon four alternative factors or characteristics.

If the term of the lease is equal or greater than the remaining economic life of the goods; if there is a renewal option for no additional consideration or nominal consideration; if there is mandatory renewal or the lessee becomes owner at the end of the lease term; or if the lessee has the option to purchase at the end of the lease term for no additional consideration, or any combination of these factors, the lease would tend to be treated as creating a security interest and would be subject to Article 9.

Conclusion

UCC - 2A is comprehensive, dealing with every phase of leasing transactions. It draws a great share of its concepts from Article 2 of the UCC, but it is adapted to the peculiarities of the leasing form. It is an important advance in commercial law.

UNIFORM COMMERCIAL CODE ARTICLE 2A AMENDMENTS (1990)

— A Summary —

Article 2A of the Uniform Commercial Code (UCC), when it was promulgated in 1987, marked the first addition to the UCC since its original promulgation in 1951. The subject of this new addition is Leasing, confined to the leasing of personal property. Most of the UCC is comprised of earlier uniform acts that were promulgated by the Uniform Law Commissioners between 1896 and 1947. Each article had a substantial legal and legislative history before it was brought into the UCC.

UCC 2A did not have the advantage of so much history. Leasing as a means of financing the acquisition of capital goods is a phenomenon of roughly the 20 years just preceding the promulgation of UCC 2A. Therefore, the Uniform Law Commissioners (ULC) and the American Law Institute, its partner in the UCC, were moving into new territory, entirely, in the promulgation of this new article. To form an appropriate bridge between the familiar and the new, the drafters of UCC 2A modeled the new article on the tried and familiar principles of UCC Article 2, the Sales article. But inevitably, an effort to move into a new subject is an effort with some risks.

UCC 2A had its initial consideration in the California and Oklahoma legislatures. In California, it was subjected to an extensive study by the California Bar, and the scrutiny of others with interests in the area of leasing law. The result was a series of amendments to the act. Because of the large interest in this new piece of legislation, nationally, the California amendments were circulated throughout the country. There were more bar association studies, a symposium in the Alabama Law Review, and finally, a review

by the New York Law Revision Commission. Two things emerged from all this intense scrutiny: (1) The initial decision to follow the principles of UCC Article 2 was fundamentally the correct decision and the basic structure of UCC Article 2A is sound; and (2) Some issues needed to be readdressed by amendment.

The ULC was gratified by the first conclusion that universally arose from that scrutiny. It was not particularly surprised at the second. This is entirely new legislation. That further scrutiny might find some issues to address is a logical expectation. So the ULC has proceeded to address these very few issues with amendments in 1990.

Most of the amendments proposed in 1990 are meant to clarify specific provisions of the act or to readjust them in fairly minor ways. There are three significant issues that are addressed. The three issues addressed involve the definition of a finance lease, the power to restrict assignments in a lease contract, and the character of remedies in the event a lease contract is breached.

A finance lease is a lease in which the lessor does not supply the goods that are leased. The lessor acts as a financier for the acquisition of those goods. Under the original UCC 2A, a lease was not a finance lease unless the lessee received a copy of the contract between the lessor and the supplier of the goods evidencing the acquisition of the goods, or unless the lease contract conditioned its effectiveness upon the lessee's approval of the purchase contract between the lessor and the supplier of the goods. In many leasing situations, which involve finance leasing, the lessor cannot comply with these requirements, thereby losing the attributes

of a finance lease.

It is possible to satisfy the lessee's interest in the contract of supply between lessor and supplier of the goods without the strict requirement of the original definition of finance lease.

In the amendments a lease qualifies as a finance lease if the lessor provides a statement of the terms of the supply contract or notifies the lessee where the information may be obtained from the supplier, as well as by providing the supply contract, itself.

Original UCC 2A followed UCC Article 2 with respect to freedom of contract, including the freedom to contract for restrictions on either party's ability to assign rights or obligations. Freedom of contract is a primary underlying policy of both acts. However, there are some differences between sales and leases that make the pure form notion of freedom of contract an uneasy fit for leases. Finance lessors commonly assign a security interest in the right to receive rents under a lease contract to a lending institution. This security interest is a UCC Article 9 interest. In this aspect of leasing, the transaction more clearly resembles a secured transaction under UCC 9. As a matter of policy in protecting the rights of secured parties, UCC 9 limits the power of parties to certain kinds of contracts in so far

as assignment of rights as security interests is concerned.

It was decided, therefore, to amend UCC Article 2A, following UCC Article 9 precedent, to limit the freedom of contract in lease contracts, but only for that narrow purpose of protecting the interests of secured parties. Thus a restriction on assignment rights cannot affect a holder of a security interest in the right to receive rents under a lease contract. Otherwise, freedom of contract is carefully preserved.

The third significant issue addressed in the UCC 2A 1990 amendments appears in the aggregate of amendments to several sections in Article 5. This article deals with remedies when a lease contract is breached. In the scrutiny to which UCC 2A was subjected, it was pointed out that there is no way in original UCC 2A to distinguish between material breaches of contract that allow the contract to be rescinded, fully, and breaches that are not so material as to call for absolute rescission, but may still call for the payment of damages. The amendments eliminate this deficiency.

These are the significant aspects of the 1990 amendments to UCC 2A. They are provided in the spirit of enhanced uniformity, and will make the entire UCC 2A a better act.

Benefits of Revised UCC Article 3

(With Miscellaneous and Conforming Amendments to Articles 1 and 4)

Revised Article 3 to the Uniform Commercial Code (UCC), with conforming amendments to Articles 4 and 1, constitutes a companion to Article 4A. Both are needed to update the provisions of the UCC to provide essential rules for the new technologies and practices in payment systems since the UCC was promulgated nearly four decades ago. In 1990 the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) approved revisions to Articles 3 and 4, and they are now offered for enactment in the various states.

When the UCC was first promulgated, three billion checks were handled annually. Currently, over 50 billion checks are processed annually. To handle the increased load with greater reliability, computer and other technologies — such as the MICR line — have made the much needed faster processing possible.

In addition, the Expedited Funds Availability Act of 1987 requires banks to clear checks and to make funds more quickly available. This, too, has accelerated the need for automation and speed in the processing of checks.

* The present Articles 3 and 4, written for a paper based system, cannot adequately address issues of responsibility and liability for the new technologies now employed and the procedures required by the Expedited Funds Availability Act and the Regulation CC. While agreements among parties to particular transactions have long provided some relief, such stop gap measures are no longer adequate.

Revised Article 3 is necessary to update, improve and maintain the viability of Articles 3 and 4. Absent such an update, further Federal preemption of state law is even more likely to occur.

Benefits in the Public Interest

Certainty — Revised Articles 3 and 4 remove numerous uncertainties that exist in the current provisions.

Speed and Reliability — The revisions remove encumbrances to use of new technologies of automation, and better conform to Regulation CC to expedite the availability of funds to customers and reduce risks to banks.

Lowers Costs — By providing for the new technologies, lower costs are possible to banks and thus to their customers.

thayer **Reduced Litigation** — By clarification of troublesome issues — and by the provisions of Sections 3-404 through 3-406, which reform rules for allocation of loss from forgeries and alterations — the revisions should significantly reduce litigation.

Benefits to Users

"Good Faith" — The definition of good faith under Sections 3-103(a)(4) and 4-104(c) is expanded to include observance of reasonable commercial standards of fair dealing. This objective standard for good faith applies to performance of all duties and obligations established under Articles 3 and 4, and thus tracks the standard under Article 4A.

Fiduciary Provisions — Section 3-307 protects drawers and persons owed a fiduciary responsibility by imposing stricter standards for obtaining holder in due course rights by a person dealing with the defaulting agent or fiduciary. It also spells out the circumstances under which a person receiving funds has notice of a breach of fiduciary duty, and resulting liability.

Accord and Satisfaction — Under Section 3-311 payees can avoid unintentional accord and satisfactions by returning the funds or by giving a notice that requires checks to be sent to a particular office where such proposals can be handled. On the other hand, the drawer of a full settlement check is protected from the instrument being endorsed with protest and thus losing the money and being liable on the balance of the claim.

Cashier's Checks — Section 3-411 and related provisions considerably improve the acceptability of bank obligations like cashier's checks as cash equivalents by providing disincentives to wrongful dishonor, such as recovery of consequential damages.

Indorser Liability — Section 3-415 gives more time to hold a check before the user loses endorser liability.

Reporting Forgeries — Section 4-406 increases the time a customer has to report forged checks or alterations up to thirty days. It also requires a bank truncating checks to retain the item or the capacity to furnish legible copies for seven years.

Individual Agent and Corporate Liability — Section 3-402, as to corporate instruments signed by agents, (except as against the holder in due course), allows a representative to show the parties did not intend individual liability. It affords full protection to the agent that signs a corporate check, even though the check does not show representative status. Also, Section 3-403(b) makes it clear that a signature of an organization is considered unauthorized if more than one signature is required and it is missing.

Direct Suits — Section 3-420 allows a person whose indorsement is forged to sue the depository bank directly, rather than each drawee of the check involved.

Benefits to Banks

Certainty — Section 3-104 and related provisions clarify what types of contracts are within Article 3, thus promoting certainty of legal rules and reducing litigation costs and risks. Included as fully negotiable are checks that may omit "words of negotiability;" confusion over travelers checks is eliminated; variable rate instruments are included; and there is clarification of the impact of the FTC "Holder" Rule, clarification of the ability of parties to an instrument that is not included in Article 3 to contract for the application of its rules to their contract;

and clarification of money orders as checks rather than bank obligations.

"Ordinary Care" — In Sections 3-103(a)(7) and 4-104(c) ordinary care is defined, making clear that financial institutions taking checks for processing or for payment by automated means need not manually handle each instrument if that is consistent with the institutions's procedures and the procedures used do not vary unreasonably from general usage of banks. This clarification is designed to accommodate and facilitate efficiency, thus lowering costs and lowering expedited funds availability risks. The definition of ordinary care relates to those specific instances in the Code where the standard of ordinary care is set forth.

Statute of Limitations — Sections 3-118 and 4-111 include statutory periods of limitations which will make the law uniform rather than leaving the topic to widely varying state laws.

Employee Fraud — Section 3-405 expands a *per se* negligence rule to the case of an indorsement forged by an employee. It also covers that of a faithless employee who supplies a name and then forges the indorsement, but does not require a precise match between the name of the payee and the indorsement.

Bank Definition — The definition of bank is expanded for the purposes of Articles 3 and 4 to clearly include savings and loans and credit unions so that their checks are directly governed by the Code. Section 4-104 clarifies that checks drawn on credit lines are subject to the rules for checks drawn on deposit accounts.

Truncation — Section 4-110 authorizes electronic presentment of items and related provisions remove impediments to truncation. Truncation will reduce risks from mandated funds availability and improve the check collection process. Section 4-406 allows an institution the benefit of its provisions even though it does not return the checks due to truncation. If both the customer and the institution fail to use ordinary care, a comparative negligence standard is used rather than placing the full loss on the institution.

New

UNIFORM COMMERCIAL CODE

ARTICLE 4A — FUNDS TRANSFERS

— A Summary —

The payment of obligations is of vital importance to almost all commercial transactions. Occasionally problems arise when payment is not made, or is made improperly. It is neither convenient nor prudent to pay large or even modest obligations in actual cash. So, individuals and corporations, big account holders and small, have turned to bank accounts and bank credit, and have paid obligations by written instruments that accomplish a transfer of bank credit - check, money order, bank draft, etc. For the past twenty years, in every state, the rights and obligations of parties to payment by check have been governed by Articles 3 and 4 of the Uniform Commercial Code (UCC). Checks will remain the method by which many obligations are paid for the foreseeable future. However, electronic technology is now a fact of life and new methods for transferring bank credit for the purposes of payment are a result. Article 4A is a reflection of this fact.

How has technology affected systems of payment? Most people are aware of automated teller machines for their personal use. Indeed, these machines have become very popular. But such technology is widely used to make large transfers of funds that satisfy obligations arising from commercial transactions as well. The technology is simply too convenient and too fast not to be used for the transfer of large sums around the world.

The amounts which move through the large value automated systems are truly staggering. In 1989 as Article 4A is promulgated, one trillion dollars are transferred on an average day. In 1989, a record day of three trillion dollars was recorded. This is roughly the 1989 gross national product of the United States. Undoubtedly, this record will be surpassed in due course

and probably frequently in the future. Such figures indicate the impact of the technology. They also indicate the need for some governing law.

In 1989, as the new Article 4A is proposed to the states for adoption, there is no backstop statutory law to govern funds transfers. The rules for checks in Articles 3 and 4, which utilize the signatures and endorsements on the check as the basis for determining liability, do not apply to electronic funds transfers. Nor are the rules governing the liability of banks to customers under Article 4 helpful. Many transfers in the United States are effected through electronic transfer networks; one is owned and operated by the Federal Reserve and is known as FedWire and the other is owned and operated by the New York Clearing House and is known as CHIPS (Clearing House Interbank Payments Systems). Each of these systems has rules to govern transactions between participating banks, but they do not affect bank customers. Outside FedWire and CHIPS, common-law contract rules are the basis for determining liability. However, serviceable, negotiated contracts are rare. Bank customers usually need a funds transfer immediately and do not take the time to negotiate a contract. Transfers are frequently made in a legal void.

Article 4A is the remedy for this void. Because the total volume of funds transfers is very great and because many individual transactions are very large, the cost of uncertainty in the law could be very high. Article 4A is necessary to the continued usage of existing funds transfers and for the anticipated future expansion in this usage.

Some terminology is necessary to follow a funds transfer under Article 4A. A "sender" is any person or entity who sends a "payment order." The first sender

is the originator, and subsequent senders are banks participating in the transfer. A sender communicates a "payment order" to a "receiving bank." Receiving banks become senders if they forward "payment orders" to other banks. The last bank in the communications chain is the beneficiary's bank, and it can never be a sender with respect to the specific funds transfer. The "beneficiary" is the entity that the sender intends to pay. A "payment order" is simply the form of communication that the parties to a funds transfer agree to use. The payment order's salient characteristics are that it calls for an unconditional payment of money from the sender to the beneficiary and that it is transmitted to a receiving bank.

Unless the persons or entities involved in a payment of money use the same bank, a funds transfer involves at least four parties: the originator of the payment; the bank to which the originator communicates the first payment order; the beneficiary's bank that receives the final payment order; and last, the beneficiary. Intermediary receiving and sending banks also may be involved. These are banks that act as conduits of payment when there is no capacity to communicate directly between the originator's bank and the beneficiary's bank.

An example illustrates the process of a funds transfer. Suppose Alpha Corporation wants to pay money to Beta Corporation to satisfy a large contractual obligation. Alpha is in New York, and Beta is in California. Alpha has a bank account with a balance sufficient to pay Beta at First Bank in New York. Beta maintains an account at Second Bank in California. The process of payment is simple. Alpha orders First Bank to pay the owed money to Beta through a transfer to Second Bank. Alpha's order is pursuant to an agreement that Alpha has with First Bank. When First Bank receives the payment order from Alpha, it communicates with Second Bank. The communication indicates that a specific amount at First Bank held for Alpha will be transferred to Second Bank with the understanding that it will be passed on to Beta. Second Bank accepts this second payment order and notifies Beta that the money is available to Beta. Value passes

between the two banks through accounting entries in a process known as settlement.

With simple transactions, why do we need a whole new article in the Uniform Commercial Code? New law - or any law - isn't necessary if everything works. But what if something goes wrong? What if First Bank makes a mistake as to the amount to be paid? What happens if Second Bank doesn't notify Beta? What happens if the payment order is fraudulent, and not actually issued by Alpha? What happens if there is a bank failure? These are a few examples of possible errors.

A funds transfer is like a string of Christmas lights: everything is fine until a light burns out. There must be a remedy for the burned out light, and to the extent there are losses they must be paid. What are the remedies if someone takes a loss? Who bears the risk of loss at a given time in the transactional process? No adequate answers to these questions exist without a backstop statutory law that allocates the loss at the appropriate places in the funds transfer. Article 4A provides clear and reliable answers, and thereby keeps the string of lights burning.

To resolve the problem of who is responsible when something in a funds transfer goes wrong, Article 4A divides the actions of the parties to a funds transfer into three essential parts. First, a funds transfer is initiated by the originator and accepted by the originator's bank. Part 2 of Article 4A, entitled "Issue and Acceptance of Payment Order," governs the relationship between the sender of a payment order and the receiving bank that will execute the payment order. What constitutes acceptance and rejection (both rightful and wrongful) of a payment order, and what must be done to amend a payment order, are determined by the rules of Part 2, as these involve the relationship between the sender and receiving bank in a funds transfer.

As between sender and receiving bank, who suffers a loss if there is a mistake? Part 2 of Article 4A resolves this critical issue. Two kinds of mistakes can occur between sender and receiving bank, an un-

authorized payment order and an erroneous payment order. The key to the rules on an unauthorized payment order is the "security procedure" that exists between sender and receiving bank. This is the agreed procedure that verifies the authenticity of a payment order or other relevant communication. In electronic funds transfer systems, the security procedure is an important element, and may involve codes, encryption, callback procedures, and the like. Any procedure that can be devised to protect the transaction is eligible. To be legally effective, it must only be commercially reasonable.

The security procedure determines who takes the risk of loss when there is an unauthorized payment order. If there is a commercially reasonable security procedure that is followed by the receiving bank, the sender must absorb the loss. If the sender proves that the security procedure was not followed or was breached by someone outside the control of the sender, the receiving bank takes the loss. The assumption is that the security procedure, if followed and not breached, will verify the authenticity of payment orders. (3)

The risk of loss for an erroneous payment order also hinges upon compliance with a security procedure for detecting error. If the sender proves that it complied with the security procedure, the receiving bank takes the loss. Otherwise, the sender is responsible for erroneous orders.

The second part of a funds transfer is the passage of funds from receiving bank to receiving bank, until the beneficiary's bank is contacted. This is covered by Part 3 of Article 4A, which is entitled "Execution of Sender's Payment Order by Receiving Bank."

Rules governing the relationship between receiving banks are contained in this part. A principal obligation of a receiving bank (other than the beneficiary's bank) is to "execute" a payment order once it has accepted the order - that is, pass it on to the next bank in the string. It executes by issuing a payment order to the next bank. (The beneficiary's bank has a different obligation. It must pay the obligation

to the beneficiary, and that is covered in Part 4 of Article 4A.) Unless agreed otherwise, a bank may use any commercially reasonable method to issue a payment order. A receiving bank is, generally, responsible for any error it commits in issuing a payment order. If a receiving bank overpays the beneficiary of a payment order, the excess is recovered from the beneficiary, not from prior senders. If a receiving bank pays a person or entity that is not the intended beneficiary, recovery is from the person receiving the money, and not from any prior sender. Only if a receiving bank underpays in a payment order, may the bank recover from prior senders, and then only an amount to cover the error and only if it issues a curative order.

Part 3 of Article 4A covers other issues pertaining to receiving banks. For instance, rules on reporting an erroneous payment order and late execution of a payment order are furnished.

The last part of a funds transfer involves actual payment to the beneficiary. It is the subject of Part 4 of Article 4A, "Payment." Each sender, going back to the originator, is obligated to pay. At a given time, the beneficiary is considered to have been paid. There is a two step approach to actual payment, although the steps are accomplished simultaneously if the transfer is made by Fedwire. First, credit is extended by each receiving bank to each sender when the sender's payment order is accepted - basically, a communications function. The second stage involves settling up between participants - the actual passage of value.

Perhaps the most important section in Part 4 is Section 4A-402. It provides that a sender of a payment order is obliged to pay the amount of the order to the receiving bank if the funds transfer is properly completed. It is essential to distinguish, in this regard, a payment order from a check.

A check is a kind of payment order. When a person writes a check on an account, it orders the institution in which the account resides to pay money to a named person (whose technical name is the payee). Although a check suspends the liability of the person

who writes it for an underlying obligation until the instrument is rightfully presented for payment and paid at the institution in which the account resides, it can be passed from person to person as payment for other obligations and accrues and extinguishes liabilities for those persons as it passes between them. If the institution refuses to pay when the check is presented, then the person who initially wrote the check is liable for the underlying obligation as well as for the check. In contrast, acceptance of a payment order for a funds transfer by a receiving bank obligates the sender to pay that bank, and that bank alone. There is no instrument that may be passed from hand to hand as payment between other people. There are no lingering liabilities that result from the negotiability of an instrument. A payment order for a funds transfer is simple and direct.

How does settlement take place? If the sender is a bank, and the funds transfer is through one of the funds transfer systems, payment takes place according to the rules of the system that govern settlement between banks. Typically, payment is a matter of debiting an account of the sender with the receiving bank, and crediting the receiving bank's account. These methods hold whether the sender is an individual or a bank.

The beneficiary's bank, the last bank in the string, is responsible for paying the beneficiary. Payment generally takes place by crediting an account of the beneficiary, although satisfaction of a beneficiary's debt also constitutes payment, and payment in general occurs when the funds are available to the beneficiary for withdrawal. The originator of a payment order, that first light in the string of lights, generally is deemed to have paid the beneficiary on the underlying commercial obligation when the beneficiary's bank accepts the payment order. If it seems premature to discharge the originator, it is because at the time of acceptance by the beneficiary's bank, the originator has done all

in its power to see that the beneficiary has obtained a credit balance at the beneficiary's bank in the agreed-upon amount. It is analogous to a situation where the originator has deposited cash to the beneficiary's account at beneficiary's bank. At that point, the originator's obligation to the beneficiary should be considered satisfied.

Finally, there are some other features of Article 4A to be considered. First, any transaction that is subject to the Electronic Funds Transfer Act of 1978 is not subject to Article 4A. This express exclusion places consumer transactions outside Article 4A, and leaves them to federal law. Second, the regulations and operating circulars of the Federal Reserve Board supersede any inconsistent provision of Article 4A. Third, transfer system rules will prevail if inconsistent with any part of Article 4A. Fourth, it is possible to vary the effect of most of the provisions of Article 4A, honoring the general Uniform Commercial Code policy of freedom of contract.

The fifth matter of special interest needs extra emphasis. Funds transfers occur and are useful so long as it is fast, efficient and inexpensive to use current and future electronic methods. A great deal of money can be passed through the current system for very little comparative cost. Therefore, Article 4A limits consequential damages for improper payment orders. Consequential damages might raise costs, reduce transaction speed by requiring the exercise of discretion by management, and increase uncertainty.

Article 4A of the Uniform Commercial Code is essential law. The continuance and viability of funds transfers depends upon its advancement in the states. And uniformity is an absolute requirement in every state, unconditionally and without deviation. Otherwise, there will be impairment of the functioning of funds transfers for the long term.

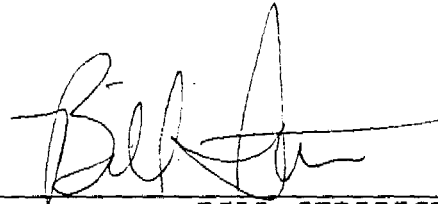
Motion/Vote: REP. MEASURE MOVED SB 1 BE CONCURRED IN AS AMENDED.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 361

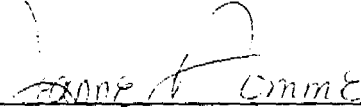
Motion/Vote: REP. WYATT MOVED SB 361 BE TABLED. Motion carried.

ADJOURNMENT

Adjournment: 11:48 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-14-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

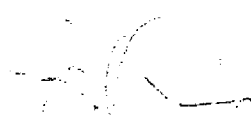
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JDB

HOUSE STANDING COMMITTEE REPORT

March 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 1 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bill Strizich, Chairman

copy to Judiciary

And, that such amendments read:

1. Page 92, lines 17 and 18.

Strike: "A lessor aggrieved under [section 77(1)]"

Insert: "If a lessee under a lease contract defaults as described in [section 77] or, if agreed, after other default by the lessee, a lessor"

2. Page 100, line 2.

Strike: "After"

Insert: "If"

3. Page 100, lines 2 through 4.

Strike: "has wrongfully" on line 2 through "[section 49)]" on line 4

Insert: "under a lease contract defaults as described in [section 77(1) or (3)(a)] or, if agreed, after other default by the lessee"

4. Page 100, line 6.

Strike: "sections 81 and"

Insert: "section 81 or"

Mazurek SB (amends from the
Unif. Comm. A.

EXHIBIT 10DATE 3-14-91SB 1

AMENDMENT 1

Section 2A-524 of the Article is amended to read:

§ 2A-524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE
CONTRACT. 578

(1) ~~A lessor aggrieved under Section 2A-523(1)~~
^a
After default by the lessee under the lease contract of
the type described in Section 2A-523(1) or 2A-523(3)(a)
or, if agreed, after other default by the lessee, the ⁶²
lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (Section 2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

EX. 10
3-14-91
SB 1

OFFICIAL COMMENT

Uniform Statutory Source: Section 2-704.

Changes: Revised to reflect leasing practices and terminology.

Definitional Cross References:

"Aggrieved party". Section 1-201(2).
"Conforming". Section 2A-103(1)(d).
"Goods". Section 2A-103(1)(h).
"Learn". Section 1-201(25).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(l).
"Lessor". Section 2A-103(1)(p).
"Rights". Section 1-201(36).
"Supplier". Section 2A-103(1)(x).
"Value". Section 1-201(44).

AMENDMENT 2

Section 2A-529 of the Article is amended to read:

§ 2A-529. LESSOR'S ACTION FOR THE RENT.

(1) After default by the lessee under the lease contract of the type described in (Section 2A-523(1)) or 2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 2A-219), (i) accrued and unpaid rent as of the date of default entry of judgment in favor of the lessor, (ii) the present value as of the same date of

Ex. 10
3-14-91
SB 1

~~default~~ of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of ~~default~~ entry of judgment in favor of the lessor, (ii) the present value as of the same ~~date of default~~ of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages ~~will be~~ is governed by Section 2A-527

81.
or Section 2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 2A-527 or 2A-528. 82

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After a default by the lessee has wrongfully ~~rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (Section 2A-402)~~ under the lease contract of the type described in Section 2A-523(1) or Section 2A-523(3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for non-acceptance under Sections 2A-527 and Section 2A-527 or Section 2A-528.

OFFICIAL COMMENT

Uniform Statutory Source: Section 2-709.

Changes: Substantially revised.

Purposes: Subsection (1) provides another method of determining the measure of lessor's damages after default by the lessee. Absent agreement to the contrary (Section 2A-504), this Article provides the lessor, in this section and the two preceding sections, three alternate methods of computing damages recoverable from the defaulting lessee (Section 2A-523(1)(e)). This section, as well as the two preceding sections, applies